THE CONDUCT OF AND PROCEDURE AT PUBLIC, COMPANY AND LOCAL GOVERNMENT MEETINGS

NINETEENTH EDITION

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(CREW)

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BY

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PREFACE TO THE NINETEENTH EDITION

THIS edition has made the minimum of alteration to its predecessor in order to embody recent decisions and legislation, the latter including the following:

The Local Government Act, 1948.
Representation of the People Act, 1948.
Representation of the People Act, 1949.
Justices of the Peace Act, 1949.
The Parish Meetings (Polls) Rules, 1950.
The Parish Meetings (Polls) (No. 2) Rules, 1950.
Parish Council Election Rules, 1952.
The Defamation Act, 1952.
Local Government (Miscellaneous Provisions) Act, 1953.

Once again the Chartered Institute of Secretaries and the Corporation of Secretaries have kindly made available the recent papers set by them.

9 *Old Square,*
Lincoln's Inn,
1956

T. P. E. C.

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GENERAL PRINCIPLES RELATING TO THE HOLDING OF MEETINGS

CHAPTER I

PUBLIC MEETINGS

SCOPE OF THIS CHAPTER

THIS chapter deals only with the holding of public meetings, that is the kind of meeting defined as a public meeting in the Public Order Act, 1936. The subsequent chapters of this part of the book deal with the general principles applicable to the meetings of the members of definite bodies as, for example, statutory bodies, clubs, committees, and so forth.

Section 9 (1) of the Public Order Act, 1936, contains for the purposes of that Act the following definitions:

"Meeting" means a meeting held for the purpose of the discussion of matters of public interest or for the purpose of the expression of views on such matters.

"Public meeting" includes any meeting in a public place and any meeting which the public or any section thereof are permitted to attend, whether on payment or otherwise.

"Public place" means any highway, public park, or garden, any sea beach, and any public bridge, road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not; and includes any open space to which, for the time being, the public have or are permitted to have access, whether on payment or otherwise.

WHERE MEETINGS MAY BE HELD

Meetings may be convened for any lawful purpose on any day, at any time, and in any place, provided that it is not unlawful for the persons attending to occupy that place, and that that place complies with any statutory enactment or by-laws which may have been made affecting the

safety of those attending. The Trade Union Act, 1913, s. 3, however, restricts the application of trade union funds for the holding of political meetings.

Public Highways.—There is no right to hold meetings for any purpose on public highways, since a highway exists only for the purposes of passage.

"A claim on the part of persons so minded to assemble in any numbers, and for so long a time as they please to remain assembled upon a highway to the detriment of others having equal rights, is in its nature irreconcilable with the right of free passage, and there is, so far as we have been able to ascertain, no authority whatever in favour of it. It was urged that the right of public meeting, and the right of occupying any unoccupied land or highway that might seem appropriate to those of Her Majesty's subjects who wish to meet there, were, if not synonymous, at least correlative. We fail to appreciate the argument, nor are we at all impressed with the serious consequences which it was said would follow from a contrary view. There has been no difficulty experienced in the past, and we anticipate none in the future, when the only and legitimate object is public discussion, and no ulterior and injurious results are likely to happen. Things are done every day, in every part of the kingdom, without let or hindrance, which there is not and cannot be a legal right to do, and not unfrequently are submitted to with a good grace because they are in their nature incapable, by whatever amount of user, of growing into a right" (*ex parte* Lewis, 1888, 21 Q. B. D., at p. 197).

"The primary and over-ruling object for which streets exist is passage. The streets are public, but they are public for passage, and there is no such thing as a right in the public to hold meetings as such in the streets. . . . Streets are for passage, and passage is paramount to everything else. That does not necessarily mean that any one is doing an illegal act if he is not at the moment passing along. It is quite clear that citizens always meet in the streets, and may stop and speak to each other. The whole thing is a

question of degree, and nothing else. . . . The right of free speech is to promulgate your opinions by speech so long as you do not utter what is treasonable, or libellous, or make yourself obnoxious to the statutes that deal with blasphemy or obscenity. But the right of free speech is a perfectly separate thing from the question of the place where that right is to be exercised. . . . Open spaces and public places differ very much in their character, and before you could say whether a certain thing could be done in a certain place, you would have to know the history of the particular place. . . . Here we are dealing with a street proper. . . . It is a thoroughfare. . . . In such a place there is not the slightest right in any one to hold a meeting as such. . . . The magistrates . . . have got to consider two things: first, whether what is going on in the streets is at all likely to interfere with . . . the right of passage; and, secondly, whether what is going on is likely to lead to a breach of the peace" (M'Ara *v.* Magistrates of Edinburgh (1913, S. C., at p. 1073)).

In Aldred *v.* Miller (1924, S. C. 117) it was held, on the assumption that a public street may be lawfully used as a place for public meeting, that such meeting must be conducted so as not to interfere with other public uses of the street. "There is no such thing as a private right in any individual to make use of any public street for holding public meetings. If the thing is done at all, it must be done with due regard to the equal participation of all the members of the public in the various uses for which public streets are kept open. The duty of the police is to vindicate public right, and not to facilitate abuse of the street by any individual of his own."

Whilst there is no right to hold such a meeting, the fact that a public meeting is held upon a highway does not necessarily make the meeting unlawful. Whether it is unlawful or not depends upon the circumstances in which it is held, *e.g.* whether or not an obstruction is caused. "The justices had no right to assume that simply because the meeting was held on a highway, it could be interrupted

notwithstanding the provisions of the Public Meeting Act, 1908" (Burden *v.* Ridler, 1911, 1 K. B., at p. 340).

Other Places.—No public meeting of more than fifty persons can be held for certain purposes within one mile of Westminster Hall during a Session of Parliament (Seditious Meetings Act, 1817).

Local authorities often permit public meetings to be held in certain defined parts of the areas under their control and make by-laws for their regulation, which if within the scope of the authority conferred on them by Statute, are enforceable (Slee *v.* Meadows, 1911, 75 J. P. 246).

No right on the part of the general public to hold meetings on a common is known to the law (De Morgan *v.* Metropolitan Board of Works, 1880, 5 Q. B. D. 155), and consequently a by-law prohibiting public meetings on a common is valid. There is no right to hold public meetings in the Royal Parks unless specific regulations so provide (Bailey *v.* Williamson, 1873, L. R., 8 Q. B. 118). Similarly there is no right to hold public meetings in Trafalgar Square except in accordance with regulations made by the First Commissioner of Works. Crown Lands Act, 1851 (14 & 15 Vict. C. 42).

In Hampstead Garden Suburb Trust *v.* Denbow (1913, 77 J. P. 318), it was held that a company had a right to restrain a public meeting being held in a private road on their land which was not dedicated to the public, and along which there was no public right of way.

ORGANISATION

The promotion and convening of public meetings necessarily depend on the object of the proposed meeting.

It is evident that either some established body or some definite persons should be responsible for the organisation and consequent expenses which a properly conducted meeting entails. It is therefore incumbent on that body or those definite persons to meet beforehand and settle the preliminaries, such as the hire of hall, advertising, printing, and the like.

A secretary and a treasurer are necessary officers, and the management should be entrusted to a small working committee, whose proceedings should be duly minuted, and whose accounts should be carefully kept and audited.

If the meeting is of a minor character and the expenses small, the promotion and convening may be left to one person, but as a rule it is essential that there should be some definite organisation to promote and conduct meetings at which the attendance may be large and the expenses connected therewith not inconsiderable.

One of the matters that requires to be decided in this connection is whether the Press should be invited to attend. Where the object of a public meeting is, as is generally the case, to promote some cause, it will probably be desirable to do so to secure the greatest possible amount of publicity.

ADVERTISEMENT

If the proposed meeting is one at which the attendance of the general public is desired, adequate notice should be given. There are many methods of advertising a meeting, each having certain advantages with corresponding drawbacks. Among those commonly used are the following:

(1) **Distribution of handbills.**—This has the merit of cheapness. However, handbills delivered from door to door are generally unwelcome.

(2) **Bill-posting.**—This method will now generally be impracticable for it is subject to strict control under the Town and Country Planning Act, 1947, and the statutory instruments made thereunder (Town and Country Planning (Control of Advertisements) Regulations, 1948, S. I. 1613). These Regulations *inter alia* make fly-posting an offence punishable on summary conviction by a fine.

(3) **Newspaper advertisement.**—The most effective medium of advertising is undoubtedly the newspaper, provided sufficient space is taken to make a proper display.

THE GENERAL CONDUCT OF A PUBLIC MEETING

The platform should be carefully planned—one person, one reserved seat; a few spare seats are always useful in case of unexpected visitors. The supporters of the chairman should know the position of their seats, some person being appointed to see that they get them.

With regard to the chairman, the usual custom is for the conveners to select their own chairman beforehand and to announce his name on the notice or advertisement of the meeting.

The chairman on rising should open the meeting with a few remarks merely by way of introduction as to the purport of the meeting or the chief speakers. He should remember that "brevity is the body as well as the soul of wit," and modify his speech accordingly. When the loquacious chairman is told to "sit down" he should, while blandly ignoring the interruption, take an early opportunity of resuming his seat.

The order of the meeting should proceed exactly as prearranged, the speeches being few and none of them long, except that of the principal speaker. At such meetings there is no obligation on the part of the chairman to allow anyone to speak, or to ask questions. The speakers and procedure are determined by the chairman and the conveners of the meeting.

Resolutions which are generally put to the vote at such meetings comprise:

(1) Declaration of principles or policy.
(2) Resolutions embodying such principles or policy to be sent to some authority or persons.
(3) Votes of thanks to principal speaker and chairman.

DISORDER AT PUBLIC MEETINGS

Disorder at public meetings generally arises from one or more of the following causes:

(1) **Irrelevant or violent interruptions** require to be

dealt with in a firm and tactful manner by the chairman. Some interruptions are welcomed. They agreeably vary the monotony of a meeting, and often give the speaker an opportunity of relieving his speech by a well-delivered retort. But unless kept within due bounds, disorder generally follows.

The chairman should use his discretion, and insist on questions being asked at the close of the speech, and also see that sufficient and proper time is allowed therefor. Sometimes he should allow an opponent to reply, but it all depends on circumstances and the temper of the audience.

(2) **Organised opposition** is very difficult to deal with, especially when the conveners of the meeting are unprepared for it. Generally, there is some indication beforehand, when it is folly not to be fully ready for it. People who come merely to disturb a meeting held on private premises generally prefer the back of the room, so that, should their courage fail them, there is a convenient exit for escape in time of trouble. It is a good plan to put probable disturbers in the front of the room, keeping them apart as much as possible. If they know there is a stronger force in the rear, they will often come to the conclusion that discretion is the better part of valour. Again, if the disturbers are all together it impedes the work of the "chucker-out," and his advent generally leads to a free fight, uproar, and disorder. Stewards of public meetings should be men of good physique, good temper, and not afraid of a row. They should know their business thoroughly, and it is wise for them to meet and have some preliminary understanding on the matter.*

* Statutory recognition is given to the position of stewards by s. 2 (6) of the Public Order Act, which provides that nothing in that section, the main object of which is to prohibit quasi-military organisations, is to prohibit the employment of a reasonable number of persons as stewards to assist in the preservation of order at any public meetings held upon private premises—or their being furnished with badges or other distinguishing signs.

(3) **A weak and tactless chairman** may cause disorder at a meeting. If he is not fair, firm, competent, or impartial, trouble may easily arise. He should carefully observe the spirit and temper of his audience, and act accordingly; quelling at the instant any signs of incipient disorder.

All persons who attend public meetings on private premises, whether admission is free or otherwise, are bound to observe the rules laid down by the conveners of the meeting, and submit to their reasonable control. A person who has paid for his admission cannot, at any rate so long as he behaves himself properly, be ejected. This proposition it is conceived can be collected from the decision in Hurst *v.* Picture Palaces, 1915, 1 K. B. 1. In that case it was held that a visitor to a theatre who has paid for his seat has a right to retain the seat so long as he behaves himself and keeps within the regulations laid down by the management. In the Court of Appeal, Buckley, L. J., said: "A licence, coupled with an agreement not to revoke it for good consideration, conferred an enforceable right, and the grant of a right to enter upon premises and see the spectacle included a contract not to revoke till the performance was ended." See Winter Garden Theatre, London, Ltd., *v.* Millennium Productions, Ltd., 1948, A. C. 173, at p. 189.

Where, however, there is no charge for admission, the licence to attend may be revoked at any time, and any person whose licence has been revoked becomes a trespasser and must withdraw, and upon refusal to withdraw may, after a reasonable interval, be ejected, and such *reasonable* force as may be necessary to effect his removal is lawful. Excessive force if used will entitle the person ejected to damages. In Hawkins *v.* Muff (*The Times*, 24th March, 1911), the plaintiff, who was ejected with violence from a political meeting by two stewards (causing fracture of his knee) for interjecting a remark during a speech by Mr. Churchill, brought an action against the

chairman of the meeting and fifteen other persons, and was awarded by a jury £100 damages for assault.

Thus where a meeting is held on private premises a person who has not paid for his admission can at any time be compelled to withdraw, and even if he has paid can be compelled to go if he behaves in a disorderly manner. In order, however, to justify his arrest his conduct must amount to a breach of the peace.

"Proof of annoyance and disturbance, such as crying 'Hear, hear,' and putting questions to the speaker, and making observations on his statements, would not be a sufficient justification of the defendant's conduct [*i.e.* giving such person in charge to the police]; but, in order to find a verdict for the defendant, they must be satisfied that what was done by the plaintiff amounted to a breach of the peace." (Wooding *v.* Oxley, 1839, 9 C. & P., p. 5.)

The conveners of a meeting in a public place have no power to compel an interrupter to withdraw.

THE POWERS OF THE POLICE

Section 1 of the Public Meeting Act, 1908, provides that any person who at a lawful public meeting acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together shall be guilty of an offence, and, if the offence is committed at a political meeting held in any parliamentary constituency between the date of the issue of a writ for the return of a Member of Parliament for such constituency and the date at which a return to such writ is made, he shall be guilty of an illegal practice within the meaning of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), and in any other case shall, on summary conviction, be liable to a fine not exceeding five pounds, or to imprisonment not exceeding one month. It also provides that any person who incites others to commit an offence under this section shall be guilty of a like offence. The Act, however, gives

no right of arrest and does not contain any provision for ascertaining the name and address of an offender.

The Metropolitan Police view of the Act of 1908 was stated in May, 1913, as follows: The Public Meeting Act gives no additional power to and imposes no additional duties on the police, but it makes the deliberate interruption of public meetings an offence cognisable by the law. The view taken by the police is that they are not required to take any initiative under the Act, and are not empowered to arrest interrupters. It is not their business to secure a hearing for speakers. It is for the speakers to get on such good terms with their audience that they can secure a hearing for themselves. The police ought not to interfere except to prevent a breach of the peace, and it may and must often happen that an act constituting a breach of the peace may not be done within sight of a police officer, or if done in his sight it may not be in his power to arrest the particular wrongdoer.

In 1909 the report of a Departmental Committee of the Home office described the legal position as to public meetings and the powers of the police in connection therewith as follows:

> We consider that for the purposes of the present inquiry a public meeting may properly be defined to include any lawful meeting called for the furtherance or discussion of a matter of public concern to which the public, or any particular section of the public, is invited or admitted, whether the admission thereto is general or restricted. This definition would seem to include any meeting called for any political or municipal purpose to which the public are admitted, whether by ticket or otherwise. It would also include many non-political meetings, such as bazaars, public lectures, and the like, but not shareholders' or committee meetings to which the public are not admitted.
>
> It should be remembered that a public meeting held indoors is not necessarily, or indeed usually, held in what is legally a public place. If a public building is hired, or even lent, to an association or other section of the public for the purposes of a meeting, it becomes in law for the time being a non-public place. Meetings held in assembly rooms, hotels, schoolrooms, etc., are also held on what are in law private premises.
>
> This distinction has a very important bearing on the question

referred to this Committee. Where a public meeting is held on private premises, as defined above, the persons present are only there on the invitation of the promoters of the meeting, and by their leave and licence. They have no more right of access to the premises, and no more right to remain on them when requested to leave by the promoters, than if they had been invited to enter a private house by the occupier of that house. If they refuse to leave when called on to do so by the chairman or representatives of the promoters, they become trespassers, and they may after a reasonable interval be removed (without undue violence) by the promoters of the meeting or by their authorised agents, and this would seem to be the case even where the person so requested to leave has paid for admission to the meeting, and where his admission money is not returned. It is this Common Law right of expelling trespassers which is frequently, in the case of continued interruption, exercised by the stewards of a public meeting at the direction of the chairman, who for this purpose represents the promoters of the meeting. So long as no undue violence is proved, the stewards so acting are not liable in damages for assault.

The status of the police in respect of order at public meetings has next to be considered. Their duties in this respect are not defined by any Public Statute, but are, generally speaking, "to keep the King's peace." The members of a police force are sworn in as constables, and are vested with all the powers and liabilities belonging by Common Law to the ancient constables. Apart from felony or suspicion of felony, which we need not deal with here, constables have no general powers at Common Law to arrest, except when a breach of the peace is committed. There are, however, numerous Acts which empower constables to arrest and take the names of offenders, and we have had cited to us an instance of a local Act (applying to Birmingham), which empowers them to arrest any person found committing any offence, punishable either on indictment or on summary conviction.

In the case of highways and places to which the public have ordinary access, the police have large powers of dealing with disorder and obstruction; but in the case of meetings held on private premises, whether for public purposes or not, the police have no power to enter except by leave of the occupier of the premises or promoters of the meeting, or when they have good reason to believe that a breach of the peace is being committed. It is no part of the duty of the police to eject trespassers from private premises. They may (acting in their capacity of private citizens) assist to eject them, if asked to do so by the occupier of the premises or the promoters of the meeting, but they are

under no obligation to do so. They may, and, indeed, are bound to, intervene in the case of an actual breach of the peace; and they may arrest without warrant a person whom they have seen committing a breach of the peace; and even if they have not seen any such breach committed, they may arrest without warrant a person charged by another for such breach, if there are reasonable grounds for apprehending the continuance or immediate renewal of such breach. We may further point out that within private premises a policeman taking part in the preservation of order is, generally speaking, under the same liability to an action for damages as a private person; except that under the Public Authorities Protection Act, 1893, legal proceedings against the police are subject to some technical limitations.

Since then it has, however, been held that police officers are entitled to enter and to remain on private premises where a meeting is being held, at any rate when the public generally have been invited to enter, if they have reasonable grounds for believing that if they are not present an offence or a breach of the peace will be committed. (Thomas *v.* Sawkins, 1935, 2 K. B. 249.)

THE PUBLIC ORDER ACT, 1936

The principal object of this Act was to help to control the disorders that had for some time prior to its passing been fomented by the various Fascist organisations.

Section 1 prohibits the wearing of uniforms in connection with political objects. Section 2 prohibits "Quasi Military Formations," and Section 3 confers powers on the police to enable them to preserve public order in connection with public processions. Apart from Section 2 (6) (see *ante*, p. 9 *n.*) these sections do not come within the scope of this book.

Section 4, however, makes it an offence for any person while present at a public meeting or on the occasion of a public procession to have with him an offensive weapon (not defined in the Act) otherwise than in pursuance of lawful authority, and Section 5 makes it an offence for any person in any public place or at any public meeting to use threatening, abusive, or insulting words or behaviour with intent to provoke a breach of the peace or

whereby a breach of the peace is likely to be occasioned. So far as the Metropolitan Police District is concerned this section substantially re-enacts the provisions of Section 54 (13) of the Metropolitan Police Act, 1839, but applies as the earlier Act did not to public meetings on private premises by virtue of the definition of public meetings contained in the Act (see *ante*, p. 3). Under the Metropolitan Police Act the maximum penalty for the offence was only 40/-, but that imposed for an offence under the Public Order Act, other than one under Section 2 thereof, is three months' imprisonment or a fine of £50 or both. Under that Act too a constable is given a power of arrest without warrant of any person reasonably suspected by him of committing an offence under Sections 1, 4, or 5.

Section 6 provides that the following Sub-section is to be added to Section 1 of the Public Meeting Act, 1908 (see *ante*, p. 11):

"(3) If any constable reasonably suspects any person of committing an offence under the foregoing provisions of this section, he may if requested so to do by the chairman of the meeting require that person to declare to him immediately his name and address, and if that person refuses or fails so to declare his name and address or gives a false name and address he shall be guilty of an offence under this sub-section and liable on summary conviction thereof to a fine not exceeding forty shillings, and if he refuses or fails so to declare his name and address or if the constable reasonably suspects him of giving a false name and address, the constable may without warrant arrest him."

DISPERSAL OF PUBLIC MEETINGS

An unlawful assembly is an assembly of three or more persons with intent either to commit a crime by open force or to carry out any common purpose, lawful or unlawful, in such a manner as to give firm and courageous persons in the neighbourhood of such assembly reason-

able grounds to apprehend a breach of the peace in consequence of it (Stephen, *Digest of Criminal Law*, 8th ed., p. 77).

"Any meeting assembled under such circumstances as, according to the opinion of rational and firm men, are likely to produce danger to the tranquillity and peace of the neighbourhood is an unlawful assembly. You will have to say whether, looking at all the circumstances, these defendants attended an unlawful assembly, and for this purpose you will take into consideration the way in which the meetings were held, the hour of the day at which the parties met, and the language used by the persons assembled and by those who addressed them. Everyone has a right to act in such cases as he may judge right, provided it be not injurious to another, but no man or number of men has a right to cause alarm to the body of persons who are called the public. You will consider how far these meetings partook of that character, and whether firm and rational men having their families and property there would have reasonable ground to fear a breach of the peace" (R. *v.* Vincent, 1839, 9 C. & P., 91).

To take part in an unlawful assembly is a common law misdemeanour punishable by fine and imprisonment, and magistrates and the police are entitled and bound to disperse such assemblies.

An assembly originally lawful does not become unlawful because it will incite unlawful opposition. "What has happened here is that an unlawful organisation has assumed to itself the right to prevent the appellants and others from lawfully assembling together, and the finding of the justices amounts to this, that a man may be convicted for doing a lawful act if he knows that his doing it may cause another to do an unlawful act. There is no authority for such a proposition" (Beatty *v.* Gillbanks, 1882, 9 Q. B. D., at p. 314). Similarly, in R. *v.* Londonderry Justices (1891, 28 L. R. Ir., at p. 450) it was said: "If danger arises from the exercise of lawful rights

resulting in a breach of the peace, the remedy is the presence of sufficient force to prevent that result, not the legal condemnation of those who exercise those rights."

This principle is, however, subject to the limitation that if it is impossible to preserve order by any other means than dispersing a lawful assembly the police may call upon the persons taking part to disperse, and if they do not do so they commit the offence of obstructing the police in the execution of their duty.

D was about to address a number of people in a street when a police officer, who reasonably apprehended that a breach of the peace would occur if the meeting were held, forbade her to do so. D persisted in trying to hold the meeting and obstructed the police officer in his attempts to prevent her doing so. Neither D nor any of the persons present at the meeting committed, incited, or provoked a breach of the peace. It was held that, as it is the duty of a police officer to prevent breaches of the peace which he reasonably apprehends, D was guilty of wilfully obstructing the officer when in the execution of his duty (Duncan *v.* Jones, 1936, 1 K. B. 218).

So too in Humphries *v.* Connor, 17 Ir. C. L. R. 1, it was held that a police officer was justified in removing a provocative emblem from the person of a lady, thereby protecting her from the threatened violence of a hostile crowd, and thus preserving the public peace which would otherwise have been broken. The moment at which a police officer becomes entitled to prevent a person from doing an otherwise lawful act must depend on questions of fact in each case. The dividing line is a difficult one to draw. In view of the state of the authorities the position must be regarded as obscure.

Justices have jurisdiction to bind over to be of good behaviour a person who, in addressing meetings in public places, although he does not directly incite to the commission of breaches of the peace, uses language the natural consequences of which is that breaches of the peace will be

committed by others, and who intends to hold similar meetings, and use similar language in the future (Wise *v.* Dunning, 1902, 1 K. B. 167).

Persons taking part in meetings held on the highway may, of course, commit the offence of obstruction and be dealt with accordingly.

DEFAMATION

So far as the speaker at a public meeting is concerned he is as liable for defamatory statements made by him in exactly the same way as he would be liable for statements made on any other occasion.

It is, however, provided by the Defamation Act, 1952, that a fair and accurate report on a matter of public concern in a newspaper (as defined in the Act) of the proceedings at any public meeting held in the United Kingdom, unless the publication is proved to be made with malice, is privileged subject to explanation or contradiction; that is to say it is privileged unless upon the request of any person defamed thereby that a reasonable letter of explanation or contradiction be published in the same newspaper the defendant has refused or neglected to comply with the request (Defamation Act, 1952, Section 7 and Part II of the Schedule).

The schedule defines a public meeting as any meeting *bona fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto is general or restricted.

RELIGIOUS MEETINGS

These meetings are protected from disturbance by the Places of Religious Worship Act, 1812, Section 12 of which provides that any person wilfully and maliciously or contemptuously disquieting or disturbing any meeting or congregation of persons assembled for religious worship, or molesting or misusing any person officiating

at such meeting or congregation, or any person there assembled, upon proof before any justice by two or more credible witnesses, is to find two sureties, to be bound in the sum of fifty pounds to answer for such offence, and in default to be committed to prison till the next quarter sessions, and upon conviction to forfeit the sum of forty pounds. See also the Religious Disabilities Act, 1846.

CHAPTER 2

THE CONVENING OF MEETINGS

IN this and the succeeding chapters of this Part there are discussed the general principles relating to the meetings of bodies of which the members are limited and known, such as statutory authorities, corporations, committees, and such-like.

In the case of a company most of the provisions as to meetings are to be found in the company's Articles of Association or in the Companies Act, 1948. These are dealt with in Part II. Similarly, in the case of local authorities there are various rules contained in statutes which govern the holding of meetings, and these are dealt with in Part III. Other bodies may be subject to their own rules as to meetings.

There are, however, a number of general principles applicable to most meetings of bodies of this kind. It should be borne in mind that the principles stated in this Part will apply only where the relevant rules governing the meeting in question do not otherwise provide.

So that a meeting may be validly convened, proper notice must be given to *each member entitled to notice* in strict accordance with the standing orders or rules of the body, organisation, or society affected, and such notice must be issued by the proper officer, person, or authority. Where no definite notice is required by the rules, a reasonable notice must be given which will give those whose duty or right it is to attend the opportunity to do so.

(1) **Notice must (in the absence of provisions to the contrary) be given to every person entitled to attend.** —The omission to summon one member to a corporate meeting avoids the acts of that meeting (R. *v.* Shrewsbury, 1735, Cas. Lee, temp. Hardw. 147). "I am of the same

opinion [*i.e.* no justification of an assault had been made out on the ground that the meeting was not a select vestry duly assembled] . . . The question is whether the allegation that the defendants were duly assembled as a select vestry has been made out. As they were assembled not on the general day of meeting, but on a particular day and for a special purpose, they should have proved the notice, without which they could not be assembled as a vestry. The sort of notice is not material; but some notice should have been shown, and it is admitted that one of them received none" (Dobson *v.* Fussy, 1831, 7 Bing., at p. 311).

A public body entrusted with the performance of a public duty cannot hold an extraordinary meeting unless all the members be summoned who can be summoned, or the unsummoned members are actually present at such meeting. The proceedings at a meeting at which any individual is not present who might have been summoned and was not summoned are void, though the omission be accidental, or though the individual has given a general notice that he wishes not to be summoned (Rex *v.* Langhorne, 1836, 6 N. & M. 203). It is competent, however, as, for example, in the case of companies, for the relevant rules to provide that certain classes of members need not be given notice of certain classes of meetings, and also that accidental omission to give a member notice of a meeting is not to invalidate the proceedings at that meeting. The right of an enemy at common law or under the Trading with the Enemy Act, 1939, to notice of meetings of a company of which he is a member, is suspended, and a meeting is properly held though no notice has been given to such a person (*re* Anglo-International Bank, Ltd., 1943, Ch. 233).

(2) **Notice not essential if all entitled to attend are present.**—But if all the persons entitled to attend are present without notice and agree to what is proposed, the proceedings cannot afterwards be invalidated on that ground. "The Court would never allow it to be said that

there was an absence of resolution when all the shareholders have expressly assented to that which is being done" (Express Engineering Works, 1920, 1 Ch. 466).

(3) **Absence beyond reasonable summoning distance (or possibly serious illness) of a person entitled to attend a meeting may sometimes be a good reason for not summoning him.**—"The election being by a definite body on a day of which, till summons, the electors had no notice, they were all entitled to be specially summoned, and if there was any omission to summon any one of them, unless they all happened to be present, or unless those not summoned were beyond summoning distance (as, for instance, abroad), there could not be a good electoral assembly, and even a unanimous election by those who did attend would be void" (Smyth *v.* Darley, 1849, 2 H. L. C. 789, at p. 803).

In *re* Portuguese Copper Mines (1889, 42 Ch. D. 160), a director of a company, on being told a meeting would be held next week, said, "I cannot be there." It was held that this could not be relied on as a waiver of his right to notice, and as no notice was sent to him the meeting was declared invalid. "Perhaps if a member were at such a distance that it would be absolutely impossible for him to attend, then the secretary might be excused from sending a notice to him and the meeting would be properly convened. Possibly the same exception might hold good when a member was so dangerously ill that he could not be moved" (Young *v.* Ladies' Imperial Club, 1920, 2 K. B. 523).

It is desirable to send notices of meetings to all members in all circumstances, even to those who may be abroad, since it enables them to be kept fully informed of what is being done at meetings of bodies of which they are members.

In many cases where the relevant rules so provide it is essential to the validity of a meeting that a notice should be sent to a member even though it cannot possibly reach him until after the meeting has taken place.

(4) **Insufficient notice of purpose of meeting may affect the validity of resolutions passed thereat.**—The notice convening the meeting should contain sufficient description of the nature of the business which the meeting is to transact, and the meeting cannot in ordinary cases go outside the business mentioned in that notice (Longfield Parish Council *v.* Wright, 1918, 88 L. J. (Ch.) 119).

The object of requiring a proper notice of the purposes for which the meeting is to be held, is to enable a member to exercise his own judgment as to whether he will attend or not. A notice may be good in part and bad in part, and it is not wholly invalid because it extends to something which cannot be done at the meeting (Cleve *v.* Financial Corporation, 1873, L. R., 16 Eq. 363). The heading in a notice of "Any other business" will generally authorise the transaction of business of a purely formal nature but not business of any substantial importance.

"Undoubtedly it was the intention of the Legislature in framing this Statute to provide that due information should be given to all the parishioners of the special purpose for which their attendance is required. . . . As to the second part of the resolution—the making a rate for the general expenses of the parish—we are all clearly of opinion that the notice was wholly insufficient for that purpose [*i.e.* because the notice did not clearly apprise the parishioners of the special purposes for which the meeting was called] and that the provisions of the Statute have not been complied with" (per Dr. Lushington, in Smith *v.* Deighton and Billington, 1852, 8 Moore P. C. 187). In Young *v.* Ladies' Imperial Club (1920, 2 K.B. 523) it was held that as the notice of a meeting did not state the object of the meeting with sufficient particularity it was invalid and consequently the proceedings of that meeting were invalidated.

(5) **Notices must be explicit.**—They must be frank, open, clear, satisfactory, and free from "trickiness." If they do not fairly disclose the purpose for which the

meeting is convened, such meeting is invalid (Kaye *v.* Croydon Tramways, 1898, 1 Ch. 358). "The Court does not scrutinise these notices with a view to exercise criticism, or to find out defects, but it looks at them fairly. I think the question may be put in this form: What is the meaning which this notice would fairly carry to ordinary minds? That, I think, is a reasonable test" (Henderson *v.* Bank of Australasia, 1890, 45 Ch. D., at p. 337).

(6) **In giving notice of a meeting it is necessary to give in detail the following particulars:** place, date, day, and time of meeting. If one meeting is to be held immediately after another, it is desirable to fix the time of the second meeting when it is thought the first meeting will end, adding the alternative "or at the determination of the previous meeting."

A meeting may not be convened for a Sunday (Sunday Observance Act, 1833).

The place at which the meeting is to be held must be one which is accessible to the persons entitled to be present. A majority cannot bind a whole corporation if a minority is deprived of its right of attending the meeting, *e.g.* by holding a meeting in a place to which some members have no access or where the place of meeting is so inconvenient or small that it is physically impossible for all to be present. Every corporate act must be done at a meeting properly convened, properly constituted, and properly held at the usual place of meeting at which every member has the right to attend, or some other place at which the members have the like right. The date of the meeting must be sufficiently far ahead to comply with any relevant requirements as to the length of notice for that meeting, and in the absence of any such provisions the notice should be of a reasonable length.

(7) **Adjourned meetings.**—A meeting may be adjourned to complete unfinished business, and in such cases unless the relevant rules otherwise provide, no notice of such adjourned meeting need be given, but no business

not specified in the notice of the meeting can be transacted at the adjourned meeting. The regulations governing the meeting may in certain cases, however, make it necessary to give a new notice (cf. Clause 57 of Table A, *post*, p. 155).

(8) **Clear days' notice.**—Where the rules specify a particular length of notice but contain no other provision this means that the notice must be given that number of "clear days" before the meeting. See *re* Railway Sleepers Supply Co. (1885) 29 Ch. D. 204 and the authorities there cited.

"Clear days" means days exclusive of the day of service and of meeting: *e.g.* when fourteen days' notice is required notice for a meeting to be held on the 16th of a month must be given on the 1st. It will be necessary in each case to see from the rules when service is deemed to be effected. Thus in Table A (Clause 131) of the Companies Act, 1948, service is deemed to have been effected 24 hours after the letter containing the same is posted and where these apply and notice is being given by post the notice required to be given on the 1st of the month in the above example would have to be posted on the last day of the previous month.

Similarly the phrase "not less than twenty-one days' notice" in Section 141 of the Companies Act, 1948, means twenty-one clear days' notice, exclusive of the day of service and exclusive of the day on which the meeting is to be held. An article which provides that the day of service of a notice is to be counted in the specified number of days is contrary to the provisions of the Act and must be disregarded (*re* Hector Whaling, Ltd., 1936, Ch. 208).

Where notice is to be given by advertisement the clear days count between the day on which the advertisement calling the meeting appears in a newspaper and the day of the meeting, and such notice is effectual even though it may not reach members until some days afterwards (Mercantile Investment Co. *v.* International Co. of Mexico, 1893, 1 Ch. 484 *n.*).

In the absence of any express provision to the contrary Sundays will be included in computing the length of the notice. The Municipal Corporations Act, 1882, provides that in the case of meetings under that Act when the notice required is of not more than seven days, a Sunday, Christmas Day, Good Friday, Monday or Tuesday in Easter Week or a day appointed for a public fast, humiliation, or thanksgiving is not to be included in computing the number of days.

CHAPTER 3

THE CHAIRMAN

"It's the chair as is speaking," said Mr. Gape, who had a true Englishman's notion that the chair itself could not be called to order.—*Orley Farm*, by ANTHONY TROLLOPE.

QUALIFICATIONS OF A CHAIRMAN

THE chairman is the person responsible for the actual conduct of the proceedings. "There is not, as far as I know, any case which has ever arisen to guide us in deciding how far the powers of a chairman extend. . . . Public meetings must be regulated somehow; and where a number of persons assemble and put a man in the chair they devolve on him, by agreement, the conduct of that body. They attorn to him, as it were, and give him the whole power of regulating themselves individually. This is within reasonable bounds. The chairman collects, as it were, his authority from the meeting" (Taylor *v.* Nesfield; *Wills on Vestries*, p. 29 *n.*).

The ideal chairman should be a man of infinite tact and patience, possess a judicial mind, be able to command the respect of the meeting, be absolutely impartial in his rulings—never allowing the latter to be questioned—and always ready and resourceful when difficulties arise. He should be firm yet courteous, able to govern men, not allow himself to be carried away by party or other feelings, able to endure bores cheerfully and circumvent mere obstructionists skilfully.

A chairman should possess a calm, placid temperament, have a proper sense of the dignity of his position, not be garrulous, and be accustomed to rule without fussiness, hauteur, or bullying. A remarkable feat by a woman was recorded in the Press in 1926. This lady, who was not

only single but singular, had the unique record of being in the chair of a committee for some eight years without having spoken for more than half an hour in the aggregate during the whole of her term of office. She was rightly regarded by the members of this committee as an ideal chairman, and her example might be followed with advantage by other chairmen.*

APPOINTMENT

There must be a chairman. If a person is present who has previously been duly elected chairman or has for some other reason a right to take the chair, that person must take the chair. If there is no such person or such person is not present, the election of a chairman is necessary, and it is desirable in such cases that a temporary chairman, who is not a candidate for the chairmanship, should be chosen, merely for the purpose of electing the chairman.

The chairman may be elected for a particular meeting, or annually, or for a fixed period of time, or sometimes for life. There is usually nothing to prevent a person proposing or seconding himself as chairman, though this course is undesirable; in any event, he is entitled to vote for himself.

Often there is a deputy-chairman or vice-chairman who takes the chair in the absence of the regular chairman at the appointed time.

Should the chairman and, if there is one, the vice-chairman be absent, it is open to the members present to elect one of their number to the vacancy, who will

* The method of addressing a woman in the Chair varies. She is sometimes addressed as "Mr. Chairman," more usually "Madam Chairman," she is also referred to in the course of the proceedings variously as "Sir" and "Madam." In the House of Commons a chairman is always addressed by name and not as "Mr. Chairman." It is the tradition and practice of the London County Council to address a woman in the Chair as "Mr. Chairman" and "Sir." The Council takes the view that it is the Chair which is being addressed and not the sex of its occupant. This practice is in accordance with the wishes of Mrs. E. M. Lowe, the first woman Chairman of the London County Council (see *The Times*, 15th March, 1939).

retain his position even if the laggard chairman or vice-chairman turns up afterwards. Usually, however, the ordinary chairman is allowed a few minutes' grace before another member is elected to the chair. As a matter of courtesy, though not of right, the chairman thus appointed often gives way to the regular chairman by vacating the chair, which operates as a virtual resignation.

A chairman should always be punctual and regular in his attendance, and whenever possible should send notice to the meeting when he is likely to be absent or unavoidably late.

The opening remarks of the chairman should be brief and to the point—tempered with discretion and wit. He should direct and control rather than lead a meeting.

How elected.—It is desirable that the chairman should as a rule be elected without opposition, by a simple motion, *e.g.* "I move that Mr. X. Y. Z. take the chair." In any case, he must be duly proposed and if there is more than one candidate, the decision of the meeting should be taken either by show of hands or, if the relevant rules so provide and a poll is properly demanded, by a poll. The actual putting of the motion for the election of a chairman to the vote is generally done by the proposer or secretary, but it is much better for a temporary chairman to be appointed, especially when there is a contested election. It cannot in any case be done by the person proposed to be elected as chairman, for "No man can preside at his own election and return himself" (R. *v.* White, 1867, L. R., 2 Q. B., at p. 561).

Objection to appointment of chairman.—Any objection to the nomination of a chairman should be made there and then. If it is not it will be too late afterwards to attempt to raise the question. "It is alleged that there was an irregularity in nominating the chairman; but it appears on a balance of the evidence that he was nominated and seconded. However, Mr. Bluck took the chair, and the meeting acquiesced and adopted him as chairman. In that capacity he was bound to declare, according to his means

of knowledge, the sense of the meeting—that is the duty of the chairman" (Cornwall *v.* Woods, 1846, 4 No. of Cas., p. 559).

Assuming that his appointment is regular and in order, the newly-elected chairman then takes the chair and briefly thanks the meeting for the honour conferred on him.

DUTIES OF THE CHAIRMAN

The chairman should be well acquainted with the statutory rules, standing orders, or other relevant rules of the body over which he is presiding, and his decisions must be governed and controlled by them.

The chairman should:

i. See that the meeting is properly convened in accordance with the rules and properly constituted—*i.e.* that proper notice was given; that there is a quorum of members present; and that his own appointment is regular and in order.

ii. Take care that all the requirements, whether of statutory rules, standing orders, or regulations, or whatever the relevant rules may be, are duly observed.

iii. See that the items of business are taken in the order set out in the agenda paper, unless that order is altered with the consent of the meeting.

iv. Take care that due and sufficient opportunity is given to those who wish to speak (and particularly the minority) to express their views on the subject under debate or discussion. (Speakers should be called on by name.) The chairman has no right to prevent discussion upon a matter which is included in the notice convening a meeting, and he should see that this sense of the meeting is properly ascertained with regard to any question which is properly before the meeting.

v. Allow no discussion unless there is some motion before the meeting.

vi. Prevent irrelevant discussion, and forbid a second

speech on the same motion except in the case of a proposer, when under the rules he has a right of reply.

vii. Take the sense of the meeting by putting the motions and amendments in proper form. Unless the relevant rules otherwise provide, voting will be by show of hands in the first place. In the case of elections governed by the common law there is a right to demand a poll. "The right to demand a poll being, therefore, as it appears to us, by the common law, an incident to the popular election of a person to an office, we think the electors cannot be deprived of it without a special custom of election inconsistent with such right or expressly excluding it by negative terms—*viz.* that no such right exists in the particular parish" (Campbell *v.* Maund, 1836, 5 A. & E. 865). A similar right may exist in the case of meetings of particular bodies if the relevant rules are silent on the point.

The chairman is not necessarily *functus officio* when he has declared the result of the voting (see Hickman *v.* Kent or Romney Marsh Sheepbreeders Association, *post.* p. 61). Before declaring that a motion is lost or carried, a chairman has a right to have a recount if he is uncertain who had voted for or against the motion. He must also decide all emergent questions which necessarily require decision at the time (*re* Indian Zoedone Co., 1884, 26 Ch. D., at p. 77). In the exercise of his authority, the chairman must act *bona fide*, and in the best interests of the meeting. If he is empowered to demand a poll, he is under a duty to do so if he believes that there is a large number of proxies which may reverse the result on a show of hands (Second Consolidated Trust Ltd. *v.* Ceylon &c. Estates Ltd., 1943, 2 All E. R. 567). His decisions, even when not strictly correct, will be upheld by the Court, unless there is evidence that some substantial injustice has arisen therefrom.

In *ex parte* Mawby (1854, 3 E. & B. 718), where a chairman of a vestry meeting rejected votes which were admissible, but such rejection caused no difference in the result, the Court declined to interfere; and in Shaw *v.* Thompson (1876, 3 Ch. D. 233), though the Court held that the conduct of the chairman was erroneous and illegal, it refused to declare the election null and void, on the ground that there was no evidence that the poll was improperly conducted or that any voter was prevented from recording his vote.

As to the chairman's powers of preserving order at the meeting, see Chapter 7 (*infra*).

THE CASTING VOTE

In the absence of express provision a chairman has no second or casting vote, but this privilege can be conferred by the relevant rules which govern the meeting.

Where a chairman has a second or casting vote, if he intends to exercise both his votes he should give his first vote while the vote of the other members is being taken and before the tendency of the votes is visible. It would be an unwarrantable stretch of his authority if a chairman reserved his votes and gave, if the numbers proved uneven, *i.e.* eight Ayes and seven Noes, first to the Noes his vote as member, and then his casting vote as chairman. It is not usually desirable for a chairman who wishes to maintain a reputation for impartiality to exercise his casting vote, as he is thereby bringing into being something which exactly one-half of those voting is opposed to. A chairman has only a casting vote if there is an *equality of votes*, which means an equality of valid votes. He may exercise his ordinary vote one way and his casting vote another, but he may decline to vote at all, and, in case of equality of votes, if he declines to vote, the motion is lost. He may give a contingent or hypothetical casting vote, to come into operation if, in the course of subsequent proceedings, it should appear that there has been an equality of valid votes (Bland *v.* Buchanan, 1901, 2 K. B. 75).

CHAPTER 4

THE GENERAL CONDUCT OF A MEETING

THE conduct of a meeting should be governed by the relevant rules. The nature of the rules depends upon the character of the body holding the meetings, but they should be clear, explicit, and free from any ambiguity. They should be fair and reasonable, and interpreted in an impartial manner. From them the chairman obtains most of his power, and, if properly drawn up, they form an invaluable authority to which the chairman can appeal. But the chairman must know the rules and understand their purport and meaning, otherwise it may lead to unnecessary conflict with members of the meeting.

The rules which local authorities make for the regulating of their proceedings and business are called Standing Orders and these are permanent regulations which cannot usually be varied or abrogated without notice of definite character, *e.g.* six months. Any member may direct attention to a breach of them.

Usually some provision is made for the suspension of standing orders for urgent or special purposes. Statutes or standing orders which limit or extend common law rights, *e.g.* those which modify the rules of meetings, must be expressed in clear and unambiguous language.

Where there are no standing orders or where standing orders are inadequate, then either the practice of the House of Commons or the usual practice of previous meetings may be followed. In a simple case, however, the difficulty may be overcome by the chairman exercising his common sense and bearing in mind that it is his duty to ascertain the views of the meeting.

Rules should safeguard the general rights of the members of the meeting, and should not endeavour to

crush the rights of minorities. When once agreed to, any alteration thereof should be made only after proper notice has been given to the persons concerned—in fact, there should be a standing rule that any such alteration should require notice of a definite length or should take place only at certain meetings.

Standing orders are of great assistance to chairman, members, and officials alike; they prevent misapprehension of the powers of the meeting, avoid confusion and disorder, and facilitate the dispatch and conduct of business.

Some societies adopt the rules of the House of Commons, *mutatis mutandis*, but these are somewhat complex and unworkable for ordinary meetings. "It appears to me that meetings of this kind (*i.e.* of a limited company) are not bound to model all their proceedings on the rules of the House of Commons. Those rules are very useful; they are the result of long experience, and when those rules are understood they work out admirably. But they are too complex for the apprehension of ordinary shareholders. . . . I think the chairman is not to be caught suddenly by an expression of opinion, when he, without very much experience (of course, I am speaking of chairmen in general, not of this chairman), on the spur of the moment, has to come to some conclusion upon some proposal before the meeting; and I am prepared to hold—and do hold—that he is allowed to express his opinion in a deliberative way" (Henderson *v.* Bank of Australasia, 1890, 45 Ch. D. 330). But it is not necessary that a member should persist in disputing the chairman's decision thus given in order to entitle him to impeach afterwards the validity of such ruling. The chairman should know his business, and if he improperly deprives a member of a right to which he is legally entitled, the validity of the proceedings may be afterwards impeached.

The meeting open to all the members of any particular body is generally the ultimate authority for all the business transacted by that body. Unless there is an express or statutory delegation of authority (*e.g.* to the Education

Committee of the London County Council, or to the watch committee of a borough) no reports or resolutions of delegated bodies are binding until they have been confirmed by the delegating body. In some cases, however, much of the important business is often delegated to committees.

A committee may consist of one person but normally consists of several. "A committee means a person or persons to whom powers are committed which would otherwise be exercised by another body" (*re* Taurine Co., 1883, 25 Ch. D., at p. 132). It exercises limited powers, which may be modified or withdrawn by its appointing authority. Its decisions are usually in the form of *recommendations* which require the adoption or approval of its appointing authority. A committee may, however, be given power to act on behalf of the whole body, and not merely to make recommendations. A committee may thus be set up by a local authority to deal with particular subjects—*e.g.* finance, highway, education, and so forth. In committee the proceedings are less formal, and discussion tends rather to elucidate the opinions of the members, and so to form some *consensus ad idem*, rather than to be directed at the long-suffering reporter as is often the case at public meetings of a local authority itself. The powers of committees should be clearly set forth in their appointment. The chairman and the members of a committee are normally members of the appointing body. It is competent for a particular body if its rules so provide to delegate most of the powers to a committee in such a way that those powers can no longer be exercised by the delegating body. Such delegation is generally made by companies to their boards of directors. In such cases unless the articles otherwise provide the exercise by the directors of the powers delegated to them cannot be controlled by the company in general meeting, and to enable the company to do this it would be necessary to alter the articles.

In turn, the committee may appoint sub-committees to deal with some specific branch of its work. A *sub-*

committee stands in the same relation to the committee as the committee does to the whole body of persons by which it is appointed, and can only act within the limits prescribed by its appointing authority, *i.e.* the committee. Delegating to a sub-committee does not imply a parting with the powers granted by the delegating committee, but confers an authority to do things which otherwise the committee would do itself. Such powers delegated to the sub-committee can be resumed at any time by the appointing committee (Huth *v.* Clarke, 1890, 25 Q. B. D., p. 391). Such sub-committee must report to the committee; the existence of a sub-committee expires with the existence of its creating body.

A committee may come into existence and have certain powers even without being expressly appointed. In such a case the powers and jurisdiction of the committee will be implied. An example of such a committee, and the limits on its jurisdiction, is found in the Trade Union case of Abbott *v.* Sullivan, [1952] 1 K. B. 189.

In some cases a body has no power to delegate; for instance, the National Dock Labour Board, a statutory body, in Barnard *v.* National Dock Labour Board, 1953, 2 Q. B. 18: Vine *v.* National Dock Labour Board, 1956, 1 All E. R. 1.

The rules, or the contract between the members, of the body may exclude the power to delegate, as in Bonsor *v.* Musicians Union, 1956, A. C. 104, where a power delegated to a committee was purported to be exercised by the secretary of the committee and such excercise was invalid and void, since the committee had no power to delegate its authority to the secretary.

A delegating body may also at any time revoke the power of a single member of a committee and his appointment to such committee (Manton *v.* Brighton Corporation, 1951, 2 K. B. 393).

Revocation of the powers of a Committee or of any of its members may be made arbitrarily and even capriciously (*ibid*).

STANDING ORDERS

Standing Orders* will usually deal (*inter alia*) with the following matters:

(1) Place, day, and time of meeting, and provision as to the convening of special meetings.

(2) The order in which business is to be transacted, *e.g.*:
  (1) Reading the notice of the meeting. This seems unnecessary, but is usual, see *post*, p. 122.
  (2) Minutes and their confirmation.
  (3) Correspondence.
  (4) Reports of committees and officers.
  (5) Finance.
  (6) Motions for debate (if proper notice has been given) in the order in which they appear on the agenda paper.

(3) Motions.
  (1) Notice and withdrawal of motions and amendments thereto.
  (2) How motions may be properly interrupted (see *post*, p. 54).

(4) Questions—in what circumstances they may be put and how to be answered.

(5) Rules of debate.
  (1) Motions to be proposed and seconded.
  (2) Speaker to stand except when in committee and to address the chair.
  (3) Length of speeches. If a time limit is set for speeches, provision should be made for an extension of such time with the special permission of the meeting.
  (4) No second speech to be allowed on the same question, unless by way of explanation, which must not introduce a new

* A model form of Standing Orders for local authorities is published by H.M. Stationery Office entitled *Model Standing Orders* (S.O. Code No. 75-20-0456).

topic—this power to be left to the discretion of the chairman.

(5) Irregular or improper conduct. The meeting should have power to deal with this, by *e.g.* resolving that the offending member be not further heard. The chairman should have the power in case of disorder or obstruction of suspending the meeting.

(6) Adjournments of debate or meetings.

(7) Rescission of resolutions, stating requisite time and notice.

(8) Voting.

(1) Voice.

(2) Show of hands.

(3) Division.

(4) Poll: how and when to be demanded, and regulations as to taking a poll.

(9) Appointment of committees and their powers.

(10) How and when standing orders or rules may be altered.

(11) Suspension of standing orders or rules. Provision is usually made for this in special circumstances, and it generally requires a certain specified majority of the members present.

Articles of companies, on the other hand, will not generally contain rules governing meetings of the company in such detail as this. They will generally only deal with the matters dealt with in (1) (6) (8) and (9) above and in addition will deal with the method of appointing the chairman of meetings and define his powers, and will also prescribe the requisite quorum for meetings. In the case of local authorities these matters are governed by the statutory provisions applicable thereto (see Part III, *post*).

QUORUM

A quorum (L., *lit.* of whom) is the minimum number of members of any body or society whose presence is

necessary for the transaction of business. The acts of a corporation, other than a trading corporation, are those of the major part of the corporation, corporately assembled. In the absence of any express regulation or special custom, the major part must be present at the meeting, and of that major part there must be a majority in favour of the act done or resolution passed (Merchants of the Staple of England *v.* Bank of England, 1887, 21 Q. B. D. 160). In the above circumstances (*i.e.* where there is no express regulation or special custom) the quorum of, say, a corporation of thirteen to constitute a valid meeting would be seven, and the act or resolution of the majority of these seven or greater number will bind the corporation (Hascard *v.* Somany, 1693, Freem. K. B. 504). A trading corporation frequently acts without a resolution of the company, *e.g.* by its directors or by some other agent, but presumably the same principle would, in the absence of express provisions in the Articles, apply to acts done or resolutions passed by meetings of such a corporation.

Regulations generally provide for a lesser quorum than this, and so soon after the time for which the meeting was convened, as that number is present the meeting may proceed to business. Generally speaking it will not be competent for a quorum to be fixed at one, for one person cannot constitute a meeting (Sharp *v.* Dawes, 2 Q. B. D. 26). Unless specially provided, persons represented by proxy cannot be counted as present in forming a quorum, and only those members can be counted towards a quorum who are competent to take part in the business before the meeting (Yuill *v.* Greymouth etc. Railway Co., 1904, 1 Ch. 32).

A quorum having once been constituted it is occasionally the practice, when the business of the meeting has once been properly started, to continue it unless some member objects and calls the attention of the chairman to the absence of a quorum, as is done in the House of Commons. Business so transacted will generally be invalid. The Third Schedule to the Local Government

Act, 1933, provides that business is not to be transacted unless the quorum required by the Act is present (*post*, Part III). Table A in the Companies Act provides in Article 53 that no business shall be transacted unless a quorum is present at the time when the meeting proceeds to business.

Under this Article, when read in conjunction with Article 54 (which covers occasions when the quorum is not present within half an hour), it was decided in *re* Hartley Baird 1955, Ch. 143, that provided that members sufficient in number to form a quorum are present when the Meeting proceeds to business it will not cease to be a valid meeting if some persons withdraw so that those present fall below the number required to constitute a quorum. Upon Wynn-Parry J's reasoning it would appear that even in the absence of a provision in the terms of Article 54, Article 53 requires the quorum when the meeting proceeds to business, but not otherwise. A different decision was reached in Scotland (Henderson *v.* James Louttit & Co. (1894), 21 R. (Ct. of Sess.) 674, which Wynn-Parry J. declined to follow).

In calculating a quorum of creditors present at a first meeting in bankruptcy, only those who have lodged proofs can be included; consequently, if there is only one creditor who has lodged a proof and he is present, he forms a quorum and constitutes a meeting (*re* Thomas, *ex parte* Warner, 1911, 55 S. J. 482; see also East *v.* Bennett Bros., *post*, p. 117); also, as has been noted, one person can be constituted a committee.

The former Board of Agriculture, which technically consisted of the Lord President of the Council, the Secretaries of State, the Lord Privy Seal, the Chancellor of the Exchequer, and a President, was said to "meet" when one person attended. The President of the Board in November, 1911, stated in the House of Commons that the quorum of a meeting of the Board consisted of one person.

In the case of companies, however, see page 118, *post*.

ADJOURNMENTS OF MEETINGS

If the chairman leaves the meeting before the business is completed, a minority of those present cannot remain and purport to carry on the business (R. *v.* Buller, 1807, 8 East. 389); but if he does so depart or if he purports to adjourn the meeting without authority, the meeting may appoint another chairman and proceed with the business, for he has no right to adjourn the meeting without the consent of the meeting itself unless the business for which it was convened has been done or an express power in that behalf is given him by the relevant rules. Similarly, in R. *v.* Winchester (1806, 7 East. 573), where there was no regular presiding officer at an election, it was held that the control thereof devolves at common law upon the electors themselves. "In my opinion the power which has been contended for is not within the scope of the authority of the chairman—namely, to stop the meeting at his own will and pleasure. The meeting is called for the particular purposes of the company. According to the constitution of the company, a certain officer has to preside. He presides with reference to the business which is there to be transacted. In my opinion he cannot say after that business has been opened, 'I will have no more to do with it; I will not let this meeting proceed; I will stop it; I declare the meeting dissolved; and I leave the chair.' In my opinion that is not within his power. The meeting by itself can resolve to go on with the business for which it has been convened, and appoint a chairman to conduct the business which the other chairman, forgetful of his duty or violating his duty, has tried to stop because the proceedings have taken a turn which he himself does not like" (National Dwellings Society *v.* Sykes, 1894, 3 Ch. 159).

A chairman is unwise to adjourn improperly a meeting, even if supported by a majority, since it may result in the minority validly carrying on the business of the meeting, provided it is sufficient to constitute a quorum.

It may, therefore, sometimes be advisable in standing orders to give the chairman specific power to adjourn a meeting at his discretion for a short period in the interests of order.

The relevant rules often make provisions for adjournments. When they do not, a meeting may resolve upon an adjournment (R. *v.* Grimshaw, 11 Jur. 965). When the relevant rules make no special provision and no quorum is constituted for a particular meeting, that meeting is ineffective. Table A, however, provides in such a case for an automatic adjournment to the same day in the next week.

POSTPONEMENT OF MEETINGS

A properly convened meeting cannot be postponed. The proper course to adopt is to hold the meeting as originally intended, and then and there adjourn it to a more suitable date. If this course be not adopted, there is a danger of certain members ignoring the notice of postponement, and, if sufficient to form a quorum, holding the meeting as originally convened and validly transacting the business thereat.

CHAPTER 5

THE AGENDA PAPER AND MINUTES

THE AGENDA PAPER

IN the case of meetings of local authorities and other meetings where the business consists of numerous items the order and nature of business to be transacted is frequently stated on an agenda paper, more familiarly called "the agenda." It should, as a rule, be circulated with the notice to the members who are entitled to be present at a meeting, and often the notice and agenda form one document. The agenda should follow some common form, varying with the meeting and the business to be transacted. The order in which items of business should be taken is often regulated by standing orders, and should not be departed from unless the chairman, with the consent of the meeting, approves. No business should be placed on the agenda or transacted at a meeting unless it comes within the scope of the notice convening the meeting.

Agenda are often drawn up in the following order:

(1) Appointment of chairman (if there is no regular chairman).
(2) Verification of the correctness of the minutes of the previous meeting.
(3) Correspondence (a *précis* of ordinary and routine letters; important letters in full).
(4) Reports of committees and/or officers (reports are often given *in extenso*).
(5) Finance (consideration of accounts and financial questions).
(6) Any special business (the nature of which should be specifically and explicitly stated).

(7) Motions which can properly be brought before the meeting.

(8) General business.

Under general business an opportunity may be taken to deal with any formal or unimportant matters, such as a resolution to pay a tradesman's bill. If, however, the relevant rules provide, as will almost invariably be the case, that notice must be given of the business to be transacted, no business of any real importance can be transacted under this head, but proper notice of it must have been given (see Longfield Parish Council *v.* Wright, 88 L. J., (Ch.) 119). In preparing the agenda, care should be taken to include therein all the business to be transacted, with sufficient detail to enable the members to grasp what it means.

An agenda should be clear and explicit, and in a summary form. It should enable the members to ascertain what matters will be discussed, and, if circulated beforehand, give them an opportunity of forming some opinion as to the course which they will adopt at the meeting. A properly drawn-up agenda prevents many questions being put to the Chair, considerably shortens a meeting, and helps to get the sense of the meeting in an intelligent and expeditious manner. Further, a well-arranged agenda prevents much confusion and irritation through members speaking on insufficient facts. It is generally advisable to consult the chairman of the meeting in preparing the agenda.

If ordinary routine business is being transacted, notes of the decisions arrived at may be made on the agenda, particularly when a wide margin or space is left for that purpose; but it is generally advisable to have a rough minute book, so that, when necessary, a detailed and more correct record of the proceedings may be taken. The agenda should be filed and kept for reference.

MINUTES

The minutes of a meeting consist of what was done at the meeting: *e.g.* resolutions and decisions of the

meeting should be minuted, but the speeches or arguments in connection therewith should not be included in the minutes. The minutes may be drawn up during the meeting and put up for approval at the end of the meeting, but the more usual course is to approve them at the next meeting. Any inaccuracy in the minutes is fatal to their value and usefulness.

The minutes should be:

(1) An exact account of what was actually agreed upon.
(2) Sufficiently detailed and complete, so that a member who was absent could fully understand what was done at that meeting.
(3) Concise.

The minutes should contain, *inter alia*:

(1) In the case of meetings of a local authority (see Part III) and where the meeting is of a comparatively small body, *e.g.* of the board of directors of a company or of a committee, the names of the members present. (The practice of including the names of officials of a local authority is to be deprecated, though it may be desirable to state that they were in attendance.) It is usual in the meetings of small bodies to record in the minutes the names of those persons who vote against a specific resolution, if they request this to be done.
(2) Full and exact details of all contracts and questions involving financial considerations.
(3) The exact words of all resolutions which have been passed.
(4) Appointment, salaries, powers, and duties of officials (these should be very explicit).
(5) Instructions to officials, and all transactions authorised at that meeting.

Minutes, when lengthy, should be carefully indexed, and when not in actual use should be kept in a fire-proof safe. Where the business transacted at a meeting is of some importance, copies of the minutes of that meeting may be circulated with the notice of the next meeting. It

is important that the minutes should be signed by the chairman, either of the meeting at which they were taken or of that at which they were verified—generally the latter. There are certain statutory provisions as to the evidential value of minutes when so signed in the cases of companies and local authorities, and these are discussed respectively in Parts II and III. The relevant rules may, however, provide that the minutes shall be conclusive evidence of the facts therein stated and such a provision will be good (Kerr *v.* John Mottram, 1940, Ch. 657).

Any discussion on the minutes, except as to their accuracy, is out of order, and the chairman should rule accordingly. Questions arising out of the minutes are permissible with the consent of the meeting if only for information and not for discussion.

It is unwise for a chairman to sign the minutes without getting them verified as correct by a meeting. The usual method is to bring up the minutes at the next succeeding meeting, when they are read if not previously circulated. The chairman then asks whether in the opinion of the meeting they are a correct report of the proceedings, and, if the answer is in the affirmative, he formally signs them. It is not necessary that he should have been present at the meeting at which they were taken.

If there is a conflict of opinion as to their accuracy, an amendment to the motion of their correctness, embodying the suggested alteration, should be put to the meeting and it is obvious that those who were not present at the preceding meeting should not take part in the discussion or vote. The approval of the minutes by a meeting *merely verifies their accuracy*; it does not necessarily mean that such minutes are adopted or that the resolutions therein are confirmed or ratified.

CHAPTER 6

THE CONDUCT OF PROCEEDINGS

DISCUSSION AND DEBATE

THE conduct and control of the discussion or debate is mainly in the hands of the chairman, who must be discreet, impartial, and tactful in its management. The following rules should be observed:

(1) Every member who so desires should, where practicable, have an opportunity of speaking upon each motion; no second speech to be allowed except that the mover of the original motion should have the right of reply, the advocates and the opponents of the question before the meeting to speak alternately. Members should be uncovered and should usually stand whilst speaking, except when in committee. Every speech should be addressed to the chairman, and as far as possible reference to persons by name should be avoided. Every member who speaks should direct his speech strictly to the motion under discussion, or to an explanation, or to a question of order. Sometimes a time limit to length of speeches is fixed, which may be varied by the consent of the meeting.

(2) The order in which members should speak is determined by the chairman, who should endeavour to ascertain either the implied or express wishes of the meeting thereon, any conflict of opinion being settled by vote of the meeting. The chairman should call each member in turn by name whom he wishes to speak. According to custom, the member who is entitled to address

the meeting is the one who first rises to speak and who is observed by the chairman; in that event, to prevent uncertainty, the chairman announces the member's name. If a meeting declines to accept the choice of the chairman as to who shall speak, *e.g.* when several members rise simultaneously to address the meeting, it is open to the meeting to resolve this matter by formal motion, *e.g.* that Mr. A. be now heard. But deference to the chairman is a principle which should be invariably observed. It is not, however, open to the majority in this way to prevent the views of the minority being put forward (Const *v.* Harris (1824), T. & R. 496; Wall *v.* London and Northern Assets Corporation, 1898, 2 Ch. at p. 480).

(3) The chairman should impartially allow supporters and opponents of a motion equal opportunities of speaking, and have some regard to the rights of minorities.

(4) The chairman should insist on members refraining from unseemly interruptions or making a running commentary on the remarks of the speaker, and from holding informal sub-committees or private conversations *sotto voce* during debate, or any other conduct tending to disturb the meeting. He should call a member to order for repetition, unbecoming language, or any breach of order, and may direct such member, if speaking, to discontinue his speech.

(5) Points of order which may be raised by any member, whether he has previously spoken or not, should be taken immediately they are brought to the notice of the chairman. Explanations, which should be brief and to the point, must not introduce new topics. The chairman should not allow a speech or debate to follow an explanation, and unless he is firm about this a

wrangle and possible disorder generally follows. The chairman's decision on points of order is final, and in it he should have the loyal support of the meeting.

(6) Members should realise that support of the chairman and the maintenance of order expedite the transaction of business, and that the conduct of a disorderly member, if unchecked, may result in a disorderly and ineffective meeting. A want of support for the chairman often makes the subject of discussion a vehicle for personalities, to the detriment of good feeling and good taste.

(7) Discussion must be relevant to the subject under debate. Members who ignore this rule, or who use offensive language, or impute improper motives to colleagues, should be sharply dealt with by the chairman, and, in the event of persistent disregard of the authority of the chair, should be requested to retire from the meeting, and, if necessary, removed therefrom.

(8) The rising of the chairman should be accompanied by silence, and any member speaking should immediately resume his seat.

A motion, as its name implies, is a proposal moved by a member. If resolved upon, it becomes a resolution. It is thus inaccurate, though not uncommon, to speak of submitting a resolution to a meeting, *e.g.* in Section 141 (3) of the Companies Act, 1948.

All motions should be:

(1) In writing, signed by the mover, and handed to the chairman of the meeting, unless they are procedural motions (see *infra*).

Every motion and consequently, if successful, the resulting resolution should begin with the word *That*, and should generally be affirmative, not negative, in form.

(2) Relevant to the business for which the meeting is

called, and within the scope of the notice convening the meeting, and within the powers of that meeting.

(3) Duly proposed and, where it is the practice of the meeting or is required by the rules, seconded; and

(4) In compliance with any particular requirements of the relevant rules.

In the House of Commons a motion or amendment does not require to be seconded. The Speaker habitually acts on the mover's proposal of a motion or of an amendment without calling for a seconder, and also puts of his own accord questions to the House. Where the relevant rules do not otherwise provide it will be sufficient if the motion or amendment is moved but not seconded or if the chairman himself puts a proposal to the meeting (*re* Horbury Bridge Coal Co., 1879, 11 Ch. D., p. 109).

Motions are in the control of the meeting, and cannot be withdrawn unless with the unanimous consent of the members present. Motions which are not moved by the person who has given notice therefor, or by some other member for him, are dropped motions, and cannot be revived without a new notice. Motions should be discussed in the order in which they appear on the agenda paper, unless the members present wish otherwise. In case of conflict of opinion, the question should be decided by vote. Where a motion is of a complicated nature it may be advisable for the chairman, with the consent of the meeting, to divide it into separate parts, and to take a distinct vote on each. A motion which has been negatived may not be brought forward again at the same meeting, but may be brought forward again at a future meeting, usually after a specified lapse of time on the prescribed notice being given.

When there is no amendment to a motion, it is put to the meeting for its opinion, and if agreed to becomes the resolution of the meeting. When there is an amendment to the motion (and it is better to have only one amend-

ment at a time), it should be put to the meeting first; if not carried, other amendments in turn may be put, and if all amendments are lost, the original motion is put to the meeting for its decision. A mover of a motion may vote for an amendment thereof. By doing so he would in effect withdraw at least *pro tanto* his original motion. He is not tied by his original motion.

RESCISSION OF RESOLUTIONS

A resolution cannot be rescinded at the meeting at which it is passed or adopted, even though all present consent to such a proposal; it may, however, be rescinded at some subsequent meeting.

A resolution rescinding a former resolution is governed by the same principles as any other resolution, but sometimes the relevant rules prohibit the rescission of a resolution for a certain period. Standing Orders of local authorities generally do so.

AMENDMENTS

Unless standing orders otherwise require, ordinary amendments can be moved without previous notice, provided they are relevant to the motion and not outside the scope of the notice convening the meeting, and do not involve such a substantial alteration of the motion as to make it a new motion. See, however, p. 112, *post*, for the position in the case of company meetings.

Amendments generally seek to do one or more of the following things:

(1) To omit certain words.
(2) To omit certain words and insert others.
(3) To insert certain words.

Amendments should be dealt with separately and should be taken in their logical order. The effect of one or more amendments being carried will be to alter the original motion, which should then be put to the meeting again as altered without being again proposed or seconded: if this substantive motion be not carried, no resolution

results. It would not, of course, be necessary to put the original motion more than once unless it were altered by amendment.

Amendments are a fruitful source of trouble to the chairman, who often forgets that he collects his authority from the meeting and not from himself, unless of course the relevant rules give him express powers. Amendments are usually, but not necessarily, moved by minorities, and if the chairman is uncertain whether the amendment is in order, he should allow it to be moved so as to save the resolution, as failure to admit germane and relevant amendments will nullify a resolution. In Henderson *v.* Bank of Australasia (1890, 45 Ch. D. 330), where the chairman's refusal to put the amendment had withdrawn a material and relevant question from the meeting, the Court set aside the resolution passed thereat.

Chairmen sometimes refuse to admit amendments on the ground that they have not been seconded, but, unless standing orders expressly provide, the chairman has no alternative but to allow the amendment to be put. "In my opinion, if the chairman put the question *without its being either proposed or seconded by anybody*, that would be perfectly good" (*re* Horbury Bridge Coal Co., (1879), 11 Ch. D. 109). Of course the mere fact of there being no seconder indicates that it is the amendment of a small minority and will therefore be lost.

AN AMENDMENT

(1) Must not merely negative the motion. A person wishing to move such an amendment can achieve the same result by voting against it.

(2) Should, if the standing orders so provide, be formally moved and seconded;

(3) Must come strictly within the scope of the notice convening the meeting.

Amendments substantially altering the motion cannot usually be put without proper notice. "How is it possible for the Court to know how

many shareholders abstained from attending the meeting, being satisfied that the arrangement, *as it was proposed*, was advantageous to them, and being quite content to exercise no voice about it?" (Clinch *v.* Financial Corporation, 1868, L. R., 5 Eq., at p. 481). Any amendment without notice which substantially alters the motion of which notice is required is out of order, as is also any amendment which is merely obstructive or dilatory;

(4) Should preferably be in writing, clearly stating the proposed alteration, signed by the mover, and given to the chairman;

(5) May be moved or seconded by any member who has not already spoken on the motion; after which all members have a right to speak, unless the relevant rules otherwise provide:

(6) Must not be moved after the question is put:

(7) Gives no right of reply to the mover;

(8) Cannot be withdrawn without the consent of the meeting;

(9) If there is an equality of votes and the chairman does not exercise his casting vote, is, in the same way as a motion requiring to be passed by a simple majority, deemed not carried.

No member can move more than one amendment to the same motion, unless standing orders otherwise provide. The meeting must not be asked to vote on two or more amendments at the same time. The chairman should, therefore, allow only one amendment to be before the meeting at a time. When several amendments are before the meeting, it is generally the practice to take them in the order in which they will affect the main question, and not in the order in which they were moved. It is, however, usual not to allow an amendment of an amendment. If an amendment of an amendment is allowed, it generally leads to confusion. No amendment should be allowed relating to those parts of an original

motion which have already been agreed upon as forming part of the amended motion. If the amendment is not carried, the original motion remains to be further amended or discussed.

When an amendment has been put to the meeting and carried, it must be put a second time, embodied in a substantive motion, which supersedes the original motion. This substantive motion can be amended and discussed as if it were the original motion. Any amendment which so amends the substantive motion that it becomes the original motion should not be allowed. It sometimes happens that where an amendment has been carried the substantive motion incorporating that amendment is lost, in which case the original motion is not revived. This is a device which is used to get rid of the whole subject under discussion.

It is not essential to follow the rules of the House of Commons in dealing with amendments. The observance of strict formality in putting motions and amendments thereon to meetings at which there is no recognised practice is unnecessary; it is enough if conflicting propositions be so put to such a meeting that those present understand what it is that they are called on to decide (*ex parte* Stevens, in *re* The Vestry of Hammersmith 1852, 16 J. P. 632).

Amendments when motion is withdrawn.—Sometimes a motion to which an amendment is proposed to be moved is withdrawn, and if it is properly withdrawn, which usually requires the consent of the meeting, the amendment, *ipso facto*, falls to the ground and can no longer be moved. But if the original motion could have been moved without notice, a new motion incorporating the amendment, if it is one not requiring notice either, can be moved.

PROCEDURAL MOTIONS

When a motion has been duly moved and seconded, discussion thereon may be interrupted by motions for

amendment (*supra*) or by some or all of the following further motions, no notice of which is required and which need not be in writing.

(1) To move the previous question [That the question be *not* now put].
(2) To proceed to the next business.
(3) To move the closure [That the question be now put].
(4) To adjourn the debate.
(5) To adjourn the meeting.
(6) To refer a recommendation of a committee back for further consideration and report.

(1) **To move the previous question.**—When the main question, but not an amendment thereto, is under discussion, it is competent for any member who has not spoken on the main question to move the "Previous Question," in order to get rid of a motion which is considered inconvenient or on which it is thought unwise for any decision to be taken. If duly seconded, discussion may follow. The previous question takes precedence of all amendments, and may take the form of "That the question be now put"; in which case the supporters of the "Previous Question" (which is a device for shelving the matter for the time being) vote *against* it, and if successful the main question is got rid of as regards that meeting. The more general way of putting the previous question is in the form: "That the question be not now put." If this motion is not carried, the main question is then put to the vote at once without further discussion. On the other hand, if it is carried, the main question cannot be put at that meeting, though it may be brought up at a subsequent meeting. The object of the previous question is to avoid the putting of the original resolution to the vote by considering whether or not the original resolution shall be put to the vote at all. No amendment may be moved to the "Previous Question," though it may be superseded by a motion for adjourning the meeting.

(2) **To proceed to the next business.**—This motion, which has the same effect and object as the "Previous Question," *i.e.* to prevent a decision being obtained on the motion under discussion, may generally be moved at the close of any speech, and, if seconded, is put forthwith without speech or debate. If carried, the subject under discussion drops; if lost, there is generally a limit of time—*e.g.* half an hour—before this motion can be moved again concerning the same subject of debate.

(3) **The closure,** is generally moved in the form: "That the question be now put." This is moved and put in the same way as the preceding motion. If carried, the motion under discussion is put to the vote. The object of this motion may be either to burke discussion or to get a decision on a question which has been reasonably or sufficiently debated. "As to the closure, I think that if we laid down that the chairman, supported by a majority, could not put a termination to the speeches of those who were desirous of addressing the meeting, we should allow a small minority, or even a member or two, to tyrannise over the majority. The case has been put . . . as the terrorism of the majority. If we accepted this proposition, we should put this weapon into the hands of the minority, which might involve the company in all-night sittings. That seems to me to be an extravagant proposition, and in this particular case there seems to have been nothing arbitrary or vexatious on the part of the chairman or of the majority" (Wall *v.* London and Northern Assets Corporation, 1892, 2 Ch. 469).

When the views of the minority have been reasonably heard, it is competent to the chairman, with the sanction of a vote of the meeting, to declare the discussion closed, and to put the question to the vote. Not everybody is entitled to speak who wants to speak, nor should a member be allowed to speak at an undue length. The purpose of a meeting is to get things done, to come to a decision on certain matters, and discussion must be relevant, and reasonable, and subordinate to the main object of the

meeting. The chairman often has some discretionary power as to accepting a motion for the closure, which is an antidote to obstruction or delay. He should, however, have some regard to the rights of minorities, but at the same time wield it as a useful weapon to defeat mere obstructive tactics.

(4) **To adjourn the debate.**—The mover of the original motion is usually allowed the right of reply to this motion, after which no further debate is permitted. It is often the practice to give the person who successfully carries this motion the right of reopening the debate when it is again resumed at the same or the next meeting.

(5) **To adjourn the meeting.**—This motion may be moved at the close of any speech or conclusion of any business. The mover of the question under debate at the time is allowed some right of reply. If the motion to adjourn is carried, unless another time is fixed, it is usual to resume the debate or business thus interrupted at the next ordinary meeting, but it is desirable to have this point clearly dealt with by the resolution.

If a motion for adjournment of the debate or of the meeting is defeated, it may be moved again after the debate or meeting has gone on for a reasonable time.

(6) **To refer the recommendation of a committee back to the committee.**—When a motion emanates from a committee whose province it is to make recommendations on certain defined subjects, it is sometimes referred back to the committee for further consideration, having regard to more recent information which may not have reached the committee, or it may be that other circumstances have intervened since the committee met which may render it inadvisable to adopt the recommendation. Further, the recommendation may not meet with the approval of the parent body, which latter may not possess the requisite knowledge to amend the motion. In any case, it is more courteous to give the committee an opportunity of submitting another recommendation. Reference back may in some cases be tantamount to

rejection, and is a useful method of negativing a recommendation.

The standing orders of local authorities usually contain provisions relating to motions of this kind, and in every case the standing orders or other relevant rules must be complied with. In the case of adjournments, either of a particular discussion or of a meeting, the question of giving notice of the business to be transacted at the adjourned meeting will be governed by the relevant rules.

VOTING

The usual methods of obtaining the sense of a meeting are:

(1) Voice. This is only adopted when it is obvious that the meeting is practically unanimous. The chairman in this case usually reads the motion to the meeting, exclaims "As many as are of that opinion, say 'Aye,' " and listens to the voices given in the affirmative. Then he says, "As many as are of the contrary opinion, say 'No,' " and pauses to receive the voices given in the negative. By the volume of the voices he judges whether the Ayes or the Noes are in the majority. Then he announces "I think the Ayes (or the Noes) have it." This gives an opportunity for anyone present to demand a vote by show of hands.

(2) By show of hands, which is generally adopted in the first instance; each person having one vote. Voting by show of hands means the ascertainment of the views of those persons present who are entitled to vote and who in fact do hold up their hands. If the chairman's declaration as to the result is challenged, a second show of hands should be demanded. Generally, the relevant regulations provide that the declaration of the chairman as to the correctness of the result is

decisive, and any objection as to its accuracy should be made at once.

(3) By a division: *i.e.* a regular count of the members for and against the motion. In this case members separate themselves by going into different rooms or lobbies, the counting of members being delegated to tellers, one or two being appointed for each side of the question.

(4) By a poll, *i.e.* providing an opportunity for every member to cast his vote.

In the absence of special provisions a vote will first be taken on a show of hands at the end of which any voter may probably demand a poll.

"I am clearly of opinion that the demand for a poll must be made at once, as soon as the preliminary show of hands is over. Where an election is taken by a show of hands, the chairman is to form a judgment at once, to the best of his opinion, as to who is elected; and if it is the intention to test his decision in a more formal manner, this must be done at once" (R. *v.* Vicar of St. Asaph, 1883, 52 L. J., Q. B., p. 672; R. *v.* Thomas, 1883, 11 Q. B. D. 282).

"The common law right on that subject is generally understood to be that any voter, however satisfied with the correctness of the declaration on the show of hands, yet may appeal from it to the whole body of electors, and keep a poll open till all have had the opportunity of attending to record their suffrages" (R. *v.* The Vestry of St. Pancras, 1839, 11 A. & E., p. 26).

A demand for a poll probably cannot be withdrawn after it has been accepted and the meeting has come to an end (R. *v.* Mayor of Dover, 1903, 1 K. B. 668). The demand for a poll is an abandonment of the result of voting by show of hands, and the voting proper begins with the poll (Anthony *v.* Seger, 1789, 1 Hagg. Cons., 13). The chairman is the proper person to grant a poll and to make arrangements therefor.

The cases above referred to are all cases of elections

governed by the common law, but it is at least likely that a similar right to a poll exists in other cases where voting takes place and where the relevant rules do not deal expressly with the question.

In R. *v.* Rector, etc., of Birmingham (1837, 7 A. & E. 254) it was held that it is no objection to the proceedings at an election by a vestry that the chairman directed a poll without first taking a show of hands, although a show of hands was demanded and the poll was not demanded but was objected to.

Declaration of poll.—One of the duties of the chairman is to declare the poll. If no time is fixed for closing the poll, as should in all cases be done, it cannot be closed so long as any votes are coming in, but it may be closed a reasonable time after votes have stopped coming in, although if any voter is improperly excluded the poll will be invalidated (R. *v.* Lambeth, 1838, 3 A. & E. 15).

When a motion is put to a meeting a person present may take one of three courses.—He may vote for or against it, or he may abstain from voting at all. A person who is present and abstains may affect the result where, for a motion to be passed, there is required to be cast in its favour a proportion of the votes of those present. It is otherwise where the proportion is of those voting. In Labouchere *v.* Wharncliff (1879, 13 Ch. D. 346) a motion was put which required a two-thirds majority *of those present.* Of the 117 persons present 77 voted for, 38 voted against, and 2 abstained. The motion was lost.

There is no necessity for any particular formality in recording a vote. "A man may give his vote in divers ways, whether by writing, or by hand, or by voice, or by conduct, *e.g.* by nod. The form in which acquiescence is given matters not, if acquiescence be actually indicated" (Everett *v.* Griffiths, 1924, 1 K. B. 941).

Circumstances in which a vote may be taken twice on the same resolution.—When a chairman has not formally declared the result of a vote or is in doubt as

to whether his declaration is right or wrong, he is entitled if he thinks well to take a second vote on the matter, especially if he considers that through some misunderstanding the first vote did not properly represent the sense of the meeting. In Hickman *v.* Kent or Romney Marsh Sheepbreeders' Association (1920, 36 T. L. R. 528; affirmed, 1921, 37 T. L. R. 163), the articles governing the association required in the circumstances twelve voting in favour to four against before a certain resolution could be properly carried. The chairman, having put the resolution, counted and found eleven in favour and four against. As he had not voted himself and was doubtful whether one or two persons had in fact voted, he put the resolution again, and it was carried by fourteen to four. It was objected that "when the chairman had counted eleven for and four against he declared the motion carried, and he was then *functus officio* and could not validly have a recount. I do not agree. I think that if he had said that the motion was carried but was in doubt as to whether he was right or wrong, he was entitled immediately to have the votes counted again" (36 T. L. R., at p. 533).

As to the chairman's vote, see *ante*, p. 32.

CHAPTER 7

EXPULSION FROM MEETINGS

WHEN a meeting of a body or society takes place in premises which are private property or to which a stranger has no right of access, a stranger may only remain so long as his presence is not objected to, and when he is requested to leave for good reason or no reason and refuses to do so he becomes a trespasser and may thereupon be ejected with such reasonable force as may be necessary.

The expulsion, however, of a member of a meeting (*i.e.* of a person who is entitled to attend thereat) except for disorderly conduct of a serious nature is illegal unless standing orders otherwise provide, and such standing orders are within the powers of the constitution governing the meeting.

"The power of suspending a member guilty of obstruction or disorderly conduct during the continuance of any current sitting is reasonably necessary for the proper exercise of the functions of any legislative assembly of this kind (N.S. Wales Assembly), and it may very well be that the same doctrine of reasonable necessity would authorise a suspension until submission or apology by the offending member, which, if he were refractory, might cause it to be prolonged (not by the arbitrary discretion of the assembly but by his own wilful default) for some further time" (Barton *v.* Taylor, 1886, 11 App. Cas., at p. 204).

Similarly in Doyle *v.* Falconer (L. R., 1 P. C. 340) it was said that if a member of a colonial House of Assembly was guilty of disorderly conduct in that House while sitting, he might be removed or excluded for a time or even expelled, and that if the conduct of the members

was not such as to secure order and decency of debate, the law would sanction the use of that degree of force which might be necessary to remove the person offending from the place of meeting and to keep him excluded, and that the same rule would apply *a fortiori* to obstructions caused by a non-member. In either case if the violation of order amounted to a breach of the peace recourse might be had to the ordinary tribunals.

It is the duty of the chairman to preserve order at the meeting, and consequently, in the event of a member of a meeting being so disorderly as to interfere unduly with the reasonable conduct of the meeting or to prevent the proper transaction of business, the chairman may order him to withdraw. If he refuses to comply with this order he may be ejected with reasonable force. If he resists ejection he may commit a breach of the peace. It is usually, however, desirable that the chairman should be supported by the majority of the meeting before he orders a member to withdraw, and he should take care not to give instructions for ejection—which should be delegated to a stalwart official—unless he is quite sure such instructions will be expeditiously and efficiently carried out.

EXPULSION FROM SOCIETIES AND CLUBS

When the governing body of a club or society resolves on the expulsion of a member the resolution must, in order to be valid, have been duly passed in accordance with the rules already referred to at a meeting of the body properly convened and held, and in addition the following conditions must be fufilled:

(1) The body must have the power to expel under the rules.
(2) These rules must not be contrary to natural justice.
(3) If the decision to expel is founded on the alleged commission of some act by the member, he must be given an opportunity of defending himself.
(4) The resolution must be *bona fide*.

In Lee *v.* The Showmen's Guild of Great Britain (1952, 2 Q. B. 329) a committee of a trade union purported to expel a member. The Court of Appeal affirmed the decision of Ormerod, J. that on the true construction of the rules under which such expulsion was to be made the conduct upon which the expulsion had been based could not be unfair competition (the sole grounds for the committee's decision) and accordingly that the fine imposed in consequence and the subsequent expulsion were *ultra vires* and void.

A wrongful expulsion may give rise to a claim for damages, even against a Trade Union (Bonsor *v.* Musician's Union, 1956, A. C. 104).

CHAPTER 8

FAIR COMMENT AND PRIVILEGE IN SPEECHES

SPEECHES made at meetings or reports submitted in connection therewith come within the scope of the general law relating to slander and libel. Accordingly where any statement forming part of any speech is complained of as being defamatory it will be open to the maker of it to plead justification and to say that the statement is substantially true, and if he succeeds in establishing this allegation it will afford a complete defence to an action for slander founded on the statement.

Even if only some of the charges complained of are shown to be true, if it can be shown that the plaintiff's reputation has not been materially injured by the charges not proved having regard to the truth of the remaining charges, the defendant will have a good defence (Defamation Act, 1952, s. 5).

FAIR COMMENT

Similarly if it can be established that the statement consisted only of fair comment on a matter of public interest, this will also afford a defence. Matters of public interest include, *inter alia*, the public conduct of everyone who takes part in public affairs and the administration of public institutions and local affairs. This defence, therefore, will more often be available in connection with the proceedings of meetings of public bodies and, more rarely, if at all, with the proceedings of private meetings, *e.g.* meetings of societies or limited companies.

In order that a statement may be regarded as fair comment on a matter of public interest, it must satisfy each of the following conditions:

(1) *It must be based on facts truly stated.*

(2) It must be such comment as, in the opinion of the jury, constitutes fair criticism fairly arising out of the facts. The jury may not, however, find the criticism to be unfair merely because they do not agree with it (McQuire *v.* Western Morning News Co., 1903, 2 K. B. 100).

(3) It must be a *bona fide* and honest expression of the writer's or speaker's opinion. Proof of malice may take a criticism that is *prima facie* fair outside the limits of fair comment (Thomas *v.* Bradbury, Agnew & Co., 1906, 2 K. B. 627).

(4) It must be strictly relevant to the true facts.

(5) It must not impute to the person defamed, discreditable or improper motives unless the imputation is a matter of reasonable inference from the facts (Hunt *v.* Star Newspaper, 1908, 2 K. B. 309).

In the defence of fair comment it is no longer necessary to prove every allegation of fact. The defence shall not fail by reason only that the truth of every allegation of fact is not proved, if the expression of opinion is fair comment, having regard to such of the facts alleged or referred to in the words complained of as are proved (Defamation Act, 1952, s. 6). If in the alleged libel the facts are not set out in detail, fair comment will be a good defence if, upon particulars of the alleged facts being given, one of the facts supports the plea (Kemsley *v.* Foot, 1952, A. C. 345).

QUALIFIED PRIVILEGE

In the case of statements entitled to qualified privilege, that is, which are made on what are called privileged occasions, no action for defamation can succeed in respect of such a statement unless the plaintiff establishes that it was made maliciously.

A statement is made on a privileged occasion if it is "of such a nature that it could be fairly said that those who

made it had an interest in making such a communication, and those to whom it was made had a corresponding interest in having it made to them—when those two things co-exist, the occasion is a privileged one" (Hunt *v.* Great Northern Railway, 1891, 2 Q. B., p. 191).

In slander or libel the term "privileged communication" "comprehends all cases of communications made *bona fide* in pursuance of a duty, or with a fair and reasonable purpose of protecting the interests of the party using the words. . . . It is true that the facts proved are consistent with the presence of malice as well as its absence . . . in cases of privileged communication, malice must be proved, and therefore its absence must be presumed until such proof is given" (Somerville *v.* Hawkins, 1850, 10 C. B. 590).

The belief of the defendant that there was a duty to make the defamatory statement is irrelevant to the question whether the occasion is privileged. The test is, what the defendant's duty is, and not what he thinks to be his duty (Whiteley *v.* Adams, 1863, 15 C. B. 392).

There are various provisions that certain notices of meetings of local authorities shall be publicly exhibited (see Part III). Such a notice must specify with sufficient clarity what the purposes of the meeting are going to be, but need not set out reports which are to be considered at the meeting. Consequently, if a report set out in a notice, which is publicly exhibited, is defamatory it will not be treated as privileged communication (De Buse *v.* McCarthy, 1942, 1 K. B. 156).

"Then comes the question whether this was a privileged occasion. Where, as in this case, a body of persons are engaged in the performance of the duty imposed upon them—of deciding a matter of public administration, which interests not themselves but the parties concerned and the public—it seems to me clear that the occasion is privileged. Therefore, though what is said amounts to a slander, it is privileged, provided the person who utters it is acting *bona fide* in the sense that he is using the privileged

occasion for the proper purpose, and not abusing it" (Royal Aquarium Society *v.* Parkinson, 1892, 1 Q. B. at p. 443).

The same rules apply in the case of company meetings. In Allan *v.* Clarke (*The Times*, 17th January, 1912, p. 16), Scrutton, J. said that when a person spoke words about another which were defamatory of him the person defamed could bring an action in respect of the defamatory statement unless the person using the words could prove that they were true, but there might be a defence even although the words were not true. That was based upon public policy. There were certain relations of life in which the law regarded it as important that people should speak honestly without fear of legal action. Directors of a company had a duty to discuss the affairs of their company and might discuss the conduct of the company's officials so long as they did so honestly. That was a privileged occasion. If, however, a director did not use but abused the occasion by showing malice or spite, the privilege was gone. He held that it was a privileged occasion and the plaintiff must fail unless he could show that the defendant spoke the words maliciously. "To succeed, the plaintiff must show that the defendant used the words not honestly but maliciously against the plaintiff, intending to pay off grudges against him."

Consequently statements made to a meeting of a local authority on a topic with which such authority is competent to deal, and statements made to a meeting of a company on a subject in which the members of the company as such are interested, are made on privileged occasions. They must generally, however, be made as part of the proceedings of the meeting and may lose their character of qualified privilege if made privately after the determination of the meeting (Martin *v.* Strong, 1836, 5 A. & E. 535).

No statement will, however, be privileged if the plaintiff establishes that it was made maliciously. "*Malice*, in fact, is not confined to personal spite and ill-will, but in-

cludes every unjustifiable intention to inflict injury on the person defamed, or, in the words of Brett, L. J., 'every wrong feeling in a man's mind' " (Stuart *v.* Bell, 1891, 2 Q. B., pp. 345 and 351).

"If a person on such an occasion states what he knows to be untrue, no one ever doubted that he would be abusing the occasion. . . . But there is a state of mind, short of deliberate falsehood, by reason of which a person may properly be held by a jury to have abused the occasion, and in that sense to have spoken maliciously. If a person from anger or some other wrong motive has allowed his mind to get into such a state as to make him cast aspersions on other people, reckless whether they are true or false, it has been held—and, I think, rightly—that a jury is justified in finding that he has abused the occasion. Therefore, the question seems to me to be whether there is evidence of such a state of mind on the part of the defendant. It has been said that anger would be such a state of mind, but I think that gross and unreasoning prejudice, not only with regard to particular people, but with regard to a subject-matter in question, would have the same effect" (Royal Aquarium Society *v.* Parkinson, *supra*).

An action was brought against the chairman of a company for slander in respect of statements made concerning the manager of that company (*a*) to a shareholder, (*b*) at a meeting of directors, and (*c*) to the company's solicitor.

The Court of Session held that in the circumstances each of these occasions was privileged, and that there was no relevant averment of malice, and dismissed the action (M'Gillivray *v.* Davidson, 1934, S. L. T. 45).

Malice may be proved by evidence of personal ill-will or deliberate disregard of the truth or may be inferred from the manner in which the statement is made or other surrounding circumstances in connection with the making of the statement. But mere inadvertence or forgetfulness or careless blundering or negligence or want of sound judgment or honest indignation or that the words used are strong, is no evidence of malice.

UNNECESSARY PUBLICATION

Privilege will, however, be lost if there is *unnecessary publication.* "The want of proper caution had rendered the publication actionable as being published to the world at large. Every unauthorised publication to the detriment of another was, in point of law, to be considered as malicious" (Brown *v.* Croome, 1817, 2 Starkie, 301).

And so if reporters are present at the meeting by the express invitation of the person who makes the statement complained of, or if a report is sent with such person's authority or acquiescence to the Press, that privilege may be lost. "If a person whose duty it is to make a statement to certain persons, calls in other persons to whom he owes no duty to make the statement, in order that those other persons may hear it, I should be inclined to say . . . that there would be evidence of malice in his making it in the presence of others who might promulgate it" (Pittard *v.* Oliver, 1891, 1 Q. B., 474. See Parsons *v.* Surgery, 4 F. and F. 247).

"Where, indeed, an opportunity is *sought* for making such a charge before third persons, which might have been made in private, it would afford strong evidence of a malicious intention, and thus deprive it of that immunity which the law allows to such a statement, when made with honesty of purpose" (Toogood *v.* Spyring, 1834, 3 L. J. Ex., at p. 352).

The mere presence of reporters, however, does not necessarily destroy privilege.—The mere fact of a third person being present does not render the communication absolutely unauthorised. "The presence of these people [reporters] left his duty to discuss the matter untouched; the occasion was privileged for the performance of that duty, and the privilege was not taken away by the presence of such people under such circumstances" (*i.e.* reporters being present in accordance with the regular custom of the meeting) (Pittard *v.* Oliver, *supra*).

REPORTS OF MEETINGS

Similarly, reports sent to members of a company are privileged and in the absence of malice cannot support an action for libel (Lawless *v.* Anglo-Egyptian Cotton Co., 1869, L. R., 4 Q. B. 262).

In Quartz Hill Gold Mining Co. *v.* Beall (1882, 20 Ch. D. 501), a solicitor acting for some shareholders in a company printed and circulated, but only among the shareholders, a circular strongly reflecting on the mode in which the company had been brought out, and proposing a meeting of shareholders to take steps to protect their interests. Jessel, M. R., said: "The circular appears on the face of it to be in the nature of a privileged communication. . . . In the present case the defendant says he is acting *bona fide*, and there is no evidence against him; but if there were, I think a judge should hesitate long before he decides so difficult a question as that of privilege upon an interlocutory application, the circular being, on the face of it, privileged, and the only answer being express malice."

Newspaper Reports.—As to reports in newspapers, see the next chapter.

CHAPTER 9

THE PRESS

ONE of the matters that sometimes requires to be decided in connection with meetings is whether the Press should be invited to attend. Large public companies, for example, generally desire that their general meetings shall be reported in the papers, and so invite the attendance of reporters, but they are not of course bound to do so.

At common law the public have no right to attend meetings of local authorities. In Mayor &c. of Tenby *v.* Mason (1908, 1 Ch. 457) the defendant, a burgess and ratepayer of a town, asserted his right to be present at meetings of the council of the borough (other than committee meetings) in his capacity of (1) ratepayer of the borough; (2) reporter of a newspaper owned by him and published in that town; and, in the alternative, as a member of the public. The corporation of the town claimed a declaration of the council's right to exclude persons not members of the council (which the defendant was not) from their meetings; and for an injunction restraining the defendant from trespassing and being present at meetings of the council. It was held that a meeting of the council of a municipal corporation was not a public meeting in the sense that any member of the public had a right to attend; that there was no ground for implying against a municipal corporation a right which was not expressed in any statute nor supported by any authority; and that the defendant had therefore no such right as was asserted by him either as a burgess or as a member of the public; nor had he the right to attend as a newspaper reporter without the express or implied permission of the council. The effect of this decision has been greatly modified by the Local Authorities

(Admission of the Press to Meetings) Act, 1908,* which provides that representatives of the Press shall be admitted to the meetings of every local authority, but such representatives may be excluded in special circumstances when the majority of the members by express resolution consider such exclusion is advisable in the public interest.

The Press is generally excluded from committee meetings, where the real work of a local authority is generally done, though the Local Authorities (Admission of Press to Meetings) Act, 1908, provides that certain committees of local authorities (*e.g.* those for education) shall admit the Press to their meetings. It is generally much better for information to be obtained through the usual channels at public meetings than for garbled reports or *ex parte* statements to be communicated to the newspapers by irresponsible members; in fact, unless there is unanimity of opinion against their admission, it is preferable to admit the representatives of the Press, otherwise there is almost inevitably a "leakage" of information of an imperfect character.

On the other hand, it is often desirable to exclude the Press when business rather than propaganda work is the object of the meeting, especially when the deliberations of that meeting are reported to a parent body or society to whose meetings the Press is invited. The presence of the Press often retards the progress and business of the meeting, since members are apt to indulge in talk rather than engage in business, more particularly when elections are imminent, and there is on such occasions a natural tendency to play to the gallery *via* the newspapers. Moreover, there are times when matters of a confidential or delicate nature, or plans that are immature or undeveloped or of such a nature that they should in the first instance be discussed privately, are being considered, and the presence of the Press would naturally prevent free and open discussion.

* Set out in Appendix 1.

When it has been decided to admit the Press, proper notice should be sent to the editors of the newspapers concerned, and it facilitates the performance of the arduous duties of reporters if the agenda is sent to them at the same time as to the members, together with copies of the reports of the various committees which will be under consideration at the meeting. Proper accommodation should be provided, so that the Press can conveniently see and hear the speakers.

NEWSPAPER REPORTS

Under the common law a report of a public meeting, of a company meeting, and of other bodies was not privileged (see the cases cited in the eighteenth edition of this work, pages 68 and 71). But the Defamation Act, 1952, has extended the defence of privilege to fair and accurate reports in newspapers of matters of public concern in meetings of a number of bodies which under the common law were not privileged. Such publication must be for the public benefit, and is destroyed if the report was published with malice. It is also destroyed if the person making the report has been requested by the plaintiff to publish in the same newspaper a reasonable letter or a statement by way of explanation or contradiction and he has not done so (Defamation Act, 1952, s. 7 (2)). Amongst the bodies and reports of which the privilege is extended are local authorites, commissions of inquiry, general meetings of public (but not private) companies, and lawful public meetings. The full list is to be found in Part II of the Schedule to the Defamation Act, 1952. "Newspaper" is defined in Section 7 (5) of the same act.

PART II

MEETINGS IN THE CASE OF COMPANIES INCORPORATED UNDER THE COMPANIES ACTS

CHAPTER 10

THE CONTROL AND GOVERNMENT OF COMPANIES

PART II of this book deals with the various meetings that are held in connection with companies incorporated under the Companies Acts. The general principles dealing with meetings of all kinds have already been discussed in Part I, and in many places in that Part reference has been made for an illustration of those principles to cases concerned with companies registered under the Companies Acts. This Part, however, is confined to a consideration of the meetings held in connection with such companies.*

The Companies Act, 1948,† provides that certain things may only be done by a company with the authority of a *special* resolution, certain other things may only be done with the authority of an *extraordinary* resolution, and that certain other things may be authorised by the company in general meeting, *i.e.* by *ordinary* resolution. All these resolutions must be passed by a general meeting, *i.e.* a meeting of the shareholders entitled to vote, and, except in the case of ordinary resolutions, require, in order to be passed, a three-fourths majority of the votes cast at the meeting. The Articles of a company usually provide what acts may be done by the directors and what by a special

* Previous editions of this book referred briefly to companies incorporated by royal charter or by statute. The former are comparatively rarely met with, and the latter, which comprise railway companies and public utility companies, are diminishing in number as the result of nationalisation. In the case of a statutory company the special Act incorporating it normally provides that the provisions of the Companies Clauses Consolidation Acts shall apply, in which case the relevant provisions as to meetings will be found in those Acts. Subject to those provisions and any provisions in the incorporating Act, the principles discussed in Part I will apply to meetings of such companies.

† This Act is referred to in this Part as "the Act," and references in this Part to sections will, unless otherwise stated, be to sections of this Act.

or extraordinary resolution or by the company in general meeting. These provisions cannot, however, have the effect of relaxing the provisions of the Act.

Unless the Act or the Articles otherwise provide, a company can authorise any act by an ordinary resolution, *i.e.* one passed at a general meeting by a bare majority of votes. "Unless some provision to the contrary is to be found in the charter or other instrument by which the company is incorporated, the resolution of a majority of the shareholders duly convened, upon any question with which the company is legally competent to deal, is binding on the minority and consequently upon the company, and every shareholder has a perfect right to vote upon any such question, although he may have a personal interest in the subject-matter opposed to or different from the general or particular interests of the company" (North-West Transportation Co. *v.* Beatty, 1887, 12 App. Cas. 589, at p. 593).

This is, however, limited to matters which the company is legally entitled to transact. A majority, however large, cannot bind a minority, however small, to do that which the constitution of the company does not authorise it to do (Burland *v.* Earle, 1902, A. C. 83), nor can a majority act in fraud of a minority (*post*, p. 141).

Further, the majority will not be able to control the acts of the company in so far as the control of any particular classes of act has been removed from it by the Articles, except by altering the Articles, which requires a special resolution. Articles usually provide that the business of the company shall be managed by the directors, in which case the powers of the members in general meeting are very limited.

Clause 80 of Table A* provides as follows:

* References to Table A are to the Table A in the First Schedule to the Act. Articles of Association of a company may adopt all or any part of Table A and in the case of companies limited by shares registered after the commencement of the Act, if the Articles do not exclude the provisions of Table A these provisions will constitute the regulations of the company (Section 8). The various Articles in Table A dealing with meetings are given as examples of the kind of Articles now frequently met with.

The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Act or by these regulations, required to be exercised by the company in general meeting, subject, nevertheless, to any of these regulations, to the provisions of the Act and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

If a company disapproves of the action of its directors on a matter which is within their powers, it cannot control their action (Automatic Self-Cleansing Filter *v.* Cunninghame, 1906, 2 Ch. 34); its only course will be to remove the directors and alter the articles (Isle of Wight R. Co. *v.* Tahourdin, 25 Ch. D. 320). The removal of the directors can now be effected by ordinary resolution (*post*, p. 130) and a bare majority will not therefore have such difficulty in controlling the directors as formerly. The articles may, however, provide that the directors shall only act under the control of the company in general meeting (Marshall's Valve Gear *v.* Manning, Wardle & Co., 1909, 1 Ch. 267).

Where the articles provided that the business of a company was to be managed by the directors, who might exercise all the powers of the company "subject to such regulations (being not inconsistent with the provisions of the articles) as may be prescribed by the company in general meeting," but that no acquisition or letting of premises should be valid in the event of a managing director dissenting therefrom, it was held that resolutions of the company in general meeting, to acquire and let premises, from which the managing director dissented, were invalid and that the company must be restrained from acting thereon (Quin and Axtens *v.* Salmon, 1909, A. C. 442).

In certain circumstances, when the directors to whom are delegated the powers of the company are unable to act, *e.g.* by there being no independent quorum, or when

they are unwilling to act, the powers of the directors may revert to the company in general meeting (Barron *v.* Potter, 1914, 1 Ch. 895; Foster *v.* Foster, 1916, 1 Ch. 532).

If the directors purport to act outside their own powers, but *intra vires* the company, the company in general meeting may ratify their action (Grant *v.* United Kingdom Switchback Railway Co. (1888), 40 Ch. D. 135); but the Court will, at the instance of a single shareholder, restrain a company from purporting or attempting to do an act which is illegal or outside the powers of the company.

If the act is only irregular on the part of the directors and is such that the company could ratify it, or is one which the company has done irregularly when it might have done it regularly, a minority cannot obtain the interference of the Court (Atwool *v.* Merryweather, 1867, L. R., 5 Eq. 464 *n*).

In MacDougall *v.* Gardiner (1875, 1 Ch. D., at p. 25) it was said: "In my opinion, if the thing complained of is a thing which in substance the majority of the company are entitled to do, or if something has been done irregularly which the majority of the company are entitled to do regularly, or if something has been done illegally which the majority of the company are entitled to do legally, then there can be no use in having litigation about it, the ultimate end of which is only that a meeting has to be called, and then ultimately the majority gets its wishes."

"It is an elementary principle of the law relating to joint-stock companies that the Court will not interfere with the internal management of companies acting within their powers, and, in fact, has no jurisdiction to do so" (Burland *v.* Earle 1902, A. C., p. 83). "It is most important that the Court should hold fast to the rule" (sometimes called the rule in Foss *v.* Harbottle 1843, 2 Hare 461) "upon which it has always acted, not to interfere for the purpose of forcing companies to conduct their business according to the strictest rules, where the irregularity complained of can be set right at any moment" (Browne *v.* La

Trinidad, 1887, 37 Ch. D., at p. 17). In the ordinary way the directors are the persons entitled to institute proceedings on behalf of the company, but when the majority of the shareholders desire to protect the company's rights they are entitled to start proceedings in the name of the company (Pender *v.* Lushington (1877), 6 Ch. D. 70). As a result of the rule stated above it has long been the law that in any action complaining of an act by or on behalf of a company which is capable of ratification by the company in general meeting the company must be the plaintiff (Burland *v.* Earle (*supra*)). If the majority are not prepared to launch proceedings in respect of the act in question, they would be certain to ratify it at a general meeting, when the act, though originally irregular or unauthorised, would become valid and any proceedings launched by a minority would be bound to fail.

This rule of procedure does not apply where the act complained of would require for its ratification the passing of a special or extraordinary resolution. If it did, a bare majority, by refusing to bring proceedings in the name of the company to avoid the act, would be able effectively to ratify an act which by virtue of the Act or the constitution of the company required to be authorised by a resolution passed by a three-quarters majority (Baillie *v.* Oriental Telephone Co., 1915, 1 Ch. 503).

Minority shareholders may also bring actions complaining of the acts of the company where those acts are alleged to be a fraud on, or oppressive of minorities (Atwool *v.* Merryweather, 1867, L. R., 5 Eq. 464 *n.* See p. 141) or to be *ultra vires* the company, or to restrain a company, which has power with the sanction of a special resolution to perform some act, from performing such act when such sanction has not been obtained (see Cotter *v.* National Union of Seamen (1929) Ch. 5, 58 at p. 69).

CHAPTER II

MEETINGS OF MEMBERS

STATUTORY MEETING

EVERY limited company having a share capital, other than a private company, is required to hold a statutory meeting. Its purpose is to ensure that at an early date the shareholders may have an opportunity of ascertaining the precise position and prospects of the company.

By Section 130 it is provided:

(1) Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called "the statutory meeting."

(2) The directors shall, at least fourteen days before the day on which the meeting is held, forward a report (in this Act referred to as "the statutory report") to every member of the company:

Provided that if the statutory report is forwarded later than is required by this sub-section, it shall, notwithstanding that fact, be deemed to have been duly forwarded if it is so agreed by all the members entitled to attend and vote at the meeting.

(3) The statutory report shall be certified by not less than two directors of the company and shall state:

(*a*) The total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;

(*b*) The total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;

(*c*) An abstract of the receipts of the company and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive

headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;

(*d*) The names, addresses and descriptions of the directors, auditors, if any, managers, if any, and secretary of the company; and

(*e*) The particulars of any contract the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company.

(5) The directors shall cause a copy of the statutory report, certified as required by this section, to be delivered to the registrar of companies for registration forthwith after the sending thereof to the members of the company.

(6) The directors shall cause a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(9) In the event of any default in complying with the provisions of this section, every director of the company who is knowingly and wilfully guilty of the default or, in the case of default by the company, every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds.

(10) This section shall not apply to a private company.

Notices convening a meeting under this section must comply with the same provisions as notices of other general meetings and must also state that it is to be the statutory meeting (Gardner *v.* Iredale, 1912, 1 Ch. 700). Under Section 133 the articles may not provide for a shorter notice of any meeting than fourteen days and this will generally be the length of notice required by the articles. The notices can then be accompanied by the statutory report required by the section which must be sent to the members at least fourteen days before the day on which the meeting is held (Sub-section (2)).

All members, whether or not under the Articles they are entitled to receive notice of or to attend or vote at general meetings, are to be sent the statutory report.

Modification of Contracts.—By Section 42 a company bound to hold a statutory meeting may not previously to the statutory meeting vary the terms of a contract referred to in the prospectus, or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

Hence where the company has varied the terms of a contract referred to in the prospectus the approval of the statutory meeting will be necessary in order to make such variation valid, and this is the reason for the requirement of paragraph (*e*) of Sub-section (3).

Discussion.—Unlike the case of ordinary meetings, any topic may be discussed which is relevant to the incorporation of the company or the statutory report whether notice has been given of it or not, but no resolution may be passed unless proper notice thereof has been given in accordance with the articles (Sub-section 7).

Adjournment under Sub-section (8): The *meeting* may adjourn from time to time, and this puts the power of adjournment into the hands of the *majority of the meeting* (unanimity is not necessary) whether or not the articles give the majority this power in the case of general meetings independently of the chairman. The adjourned meeting has the same powers as an original meeting and, unlike

the case of ordinary meetings, it may consider any resolution of which notice of a proper length has been given, whether it was given before or after the original meeting (Sub-section 8), *e.g.* notice of a statutory meeting is given on the 1st January for the 16th. On this day it is adjourned to the 16th of February, and it will then be possible to consider a special resolution at the adjourned meeting if notice of it is given on the 25th January. This would not be so in the case of other general meetings.

Default in complying with the provisions of the Section.—By Sub-section (9), a penalty of £50 may be imposed on every director who knowingly and wilfully is a party to the default. Default in delivering the statutory report under Sub-section (5), or in holding the statutory meeting also results in the company being liable to be wound up by the Court (Section 222 (*b*)). In *re* Kent Outcrop Coal Co. (1912, W.N. 26) the first compulsory winding-up order was made under this paragraph. Only a shareholder may present a winding-up petition on this ground (Section 224). Where a petition for winding-up is presented on this ground the Court may, instead of making a winding-up order, direct that the statutory report shall be delivered or that a meeting shall be held (Section 225 (3)).

The statutory meeting is a general meeting and subject to the special provisions above referred to, the rules relating to general meetings will apply to it.

ANNUAL GENERAL MEETINGS

Section 131 contains certain provisions relating to annual general meetings. Sub-section (1) of that Section is as follows:

> Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of the company and that of the next:

Provided that, so long as a company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

Failure to hold a meeting in the calendar year and not holding it within fifteen months from the preceding meeting are separate offences. The former offence is not committed until after 31st December, even though the period of fifteen months has already elapsed (Smedley *v.* Registrar of Companies, 1919, 1 K. B. 97).

If an annual general meeting is not held in compliance with this sub-section the Board of Trade may, on the application of a member, direct the calling of a general meeting (Sub-section (2)). Such a meeting is, subject to any directions given by the Board of Trade, to be regarded as an annual general meeting. If, through default in holding a meeting in one year, the Board of Trade orders a meeting to be held and it is so held in the following year, the meeting is not to be treated as the annual general meeting for the year in which it is held unless at that meeting it is so resolved (Sub-section (3)).

Default either in holding an annual general meeting or in complying with any directions given by the Board of Trade under Sub-section (2) renders the company and any officer in default liable to a fine of £50 (Sub-section (5)).

The usual business transacted at an annual general meeting is the consideration of the accounts and reports, the declaration of a dividend, the election of directors, and the fixing of the remuneration of the auditor. Sometimes the directors' remuneration is also fixed at this meeting. Clause 52 of Table A provides:

All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets, and the reports of the directors and auditors, the election of directors in the place of those retiring and the appointment of, and the fixing of the remuneration of, the auditors.

Whatever the provisions of the articles, the business at

an annual general meeting includes by virtue of Section 140 (6) the consideration of any resolution of which notice has been given on a requisition under that section (*post*, p. 106).

Section 159 also provides that every company must at each annual general meeting appoint an auditor to hold office until the conclusion of the next annual general meeting. Under Sub-section (2) of that section a retiring auditor will be automatically reappointed without any resolution being passed unless he is not qualified for appointment or has resigned or a resolution has been passed appointing some one in his place, or providing that he shall not be reappointed. Any such resolution will require special notice (*post*, p. 132).

In the absence of fraud, the directors have a right to select the place of meeting if acting *intra vires* and *bona fide* (see Martin *v.* Walker, 1918, 145 L. T. N. 377).

During the whole of the annual general meeting the register of the interests of directors of the company in shares or debentures of the company or related companies required to be kept by Section 195 is by that section required to be open to the inspection of the members.

EXTRAORDINARY GENERAL MEETINGS

General meetings of the shareholders, other than annual general meetings and the statutory meeting, are usually called "extraordinary general meetings." (Clause 48 of Table A, for example, provides that "all general meetings other than annual general meetings shall be called extraordinary general meetings.") These meetings are held for the transaction of some business which ought to be done before the next annual general meeting. They will usually be convened by the directors, but may also be requisitioned by the members.

Whatever the provisions of the articles may be, the directors are bound under Section 132 to call such a meeting on the requisition of a specified proportion of the members, in which case the requisitionists must state

the object of the meeting, but the directors may fix the time and place of the meeting. If they do not comply with the requisition, the requisitionists may themselves convene the meeting.

Section 132 is as follows:

(1) The directors of a company, notwithstanding anything in its articles, shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company, or, in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having at the said date a right to vote at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3) If the directors do not within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one-half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from the said date.

(4) A meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(6) For the purposes of this section the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by section one hundred and forty-one of this Act.

Clause 49 of Table A, which deals with this matter, is as follows:

The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 132 of the Act. If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Where a requisition is made by holders of shares held jointly, such requisition must be signed by all the joint holders (Patent Wood Keg Syndicate *v.* Pearse, 1906, W. N. 164). Where the requisition consists of several documents the requirement that they shall be in "like form" does not mean that they must be in exactly the same form (Fruit & Vegetable Growers Association *v.* Kekewich, 1912, 2 Ch. 52).

If on receipt of a requisition the directors give a proper notice as to part only of the business specified in the requisition, the requisitionists may convene a meeting for the purpose of considering the business omitted from the notice sent out by the directors (Isle of Wight Railway Co. *v.* Tahourdin, 25 Ch. D. 320).

CLASS MEETINGS

Under the Articles.

Where the capital of a company is divided into shares of different classes, the articles usually provide for the alteration of the rights attached to a class with the consent of the holders of a specified majority of the shares of that class. Clause 4 of Table A, for example, provides:

If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate

general meeting the provisions of these regulations relating to general meetings shall apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

In the absence of such a provision it may well be impossible to alter the special rights of a class except with the unanimous consent of the holders of that class.

These class meetings are not general meetings, but similar rules will apply to them except in so far as the articles otherwise provide.

If any alteration is made with the consent of the requisite majority under an article such as this, the holders of not less than 15 per cent. of the issued shares of that class may apply to the Court to have the alteration cancelled on the ground that the variation would unfairly prejudice the class in question (Section 72).

Under an Article in this form, if the necessary quorum is not present at the meeting, *i.e.* "two persons at least holding or representing by proxy one-third of the issued shares of the class," such quorum will still be required at the adjourned meeting and no smaller quorum will suffice. To this extent the "regulations relating to general meetings" will not apply, and if there is an article in form similar to Article 54 of Table A, this provision will be overridden in the case of class meetings (Hemans *v.* Hotchkiss Ordnance Company, 1899, 1 Ch. 115).

Under the directions of the Court.

The meetings above referred to are convened by the company in the same way as meetings of the company are convened, but there is another kind of class meeting which may be held. This is under Section 206, Sub-sections (1), (2), and (6) of which are as follows:

(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them, the court may, on the application in a summary way of the company or of any creditor or member of the company, or, in the case of

a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(6) In this and the next following section the expression "company" means any company liable to be wound up under this Act, and the expression "arrangement" includes a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

The following section referred to in Sub-section (6) provides for the giving of full information as to the scheme with the notices summoning the meetings, particularly with regard to the interests of directors or where trustees for debenture holders are concerned, to the interests of such trustees.

This is a useful provision enabling all the members and creditors to be bound by a scheme of which the majorities of the various classes approve.

What constitutes a class of members or creditors may be a somewhat complicated question, but as the summoning of the meeting is a question for the Court, it is not within the scope of this book. The meetings are, however, usually conducted in much the same way as other meetings.

As to class meetings that may be required to be held in connection with compensation to directors for loss of office see *post*, p. 107.

MEETINGS OF DEBENTURE HOLDERS

Akin to class meetings are meetings of debenture holders, which, though they are not meetings of members,

may conveniently be noticed here. These will be convened and conducted in accordance with the provisions contained in the debentures.

A person may be entitled to vote at a meeting of debenture holders although no debentures have in fact been issued to him, if debentures have been allotted to him and he has the right to call for such debentures and is bound to accept them (Dey *v.* Rubber & Mercantile Corporation, 1923, 2 Ch. 528).

Debentures are often issued on the terms that the rights of the holders may be varied with the consent of a certain proportion of the holders or with the consent of a resolution passed by a particular majority at a meeting of the holders. Any such variation must, to be valid, be one strictly in accordance with the terms of the debentures. A power of this kind to vary rights will not justify abandoning rights and a power to compromise can only be exercised if there is some dispute to compromise (Mercantile Investment Co. *v.* International Co., 1893, 1 Ch. 484 *n*). In this respect the same rules will apply to an alteration of debenture holders' rights as will apply to an alteration of the rights attached to a class of shares under an article such as Clause 4 of Table A (*ante*).

In the case of a meeting of debenture holders a similar rule exists as in the case of other meetings, preventing the majority from committing a fraud on the minority (*re* New York Taxicab Co., 1913, Ch. 1). See pp. 141 and 142 *post*.

CHAPTER 12

NOTICE OF MEETINGS

A COMPANY is not corporately assembled so as to be able to transact any business unless the meeting is convened by a proper notice given in accordance with the provisions of the Act and the company's articles and stating the time and place of the meeting. The notice must also state the nature of the business to be transacted except where such business is of a kind of which under the articles notice is not required.

Any defect in this notice will, however, be cured if all the members entitled to be present attend and agree on the course proposed (Baroness Wenlock *v.* River Dee Co., 36 Ch. D. 681 *n*), and if all the members agree it is not even necessary in an ordinary case that there should be an actual meeting (Parker & Cooper *v.* Reading, 1926, 1 Ch. 975).

Private companies frequently adopt an Article in terms similar to Clause 5 of Part II of Table A. This provides as follows:

> Subject to the provisions of the Act, a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at general meetings (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a general meeting of the company duly convened and held.

The provisions of the Act referred to in the opening words are presumably those which require an act to be performed by the company at a meeting, *e.g.* increase of capital (Section 6) or the passing of special and extraordinary resolutions. In those cases a meeting being required the clause would not apply and an actual meeting would have to be held.

The general principles affecting notices of all classes of

meetings are discussed fully *ante*, p. 20. The following remarks concern the particular law and practice governing meetings of shareholders.

(1) **General Provisions as to Notice.**—The notice must state hour, date, and place of meeting, all of which, although usually left by the articles to the discretion of the directors, must be reasonably convenient for the shareholders.

Although the Court will not interfere with the powers and duties of directors in their management of the internal affairs of a company, directors will be restrained from fixing a particular date for holding the annual general meeting of the company for the purpose of preventing shareholders from exercising their voting powers (Cannon *v.* Trask, 1875, L. R., 20 Eq. 669).

The articles generally provide for a certain length of notice, but certain overriding provisions are contained in Section 133, which provides:

(1) Any provision of a company's articles shall be void in so far as it provides for the calling of a meeting of the company (other than an adjourned meeting) by a shorter notice than:

(*a*) in the case of the annual general meeting, twenty-one days' notice in writing; and

(*b*) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution, fourteen days' notice in writing in the case of a company other than an unlimited company and seven days' notice in writing in the case of an unlimited company.

[See as to notices of meetings for the passing of special resolutions, *post*, p. 136.]

(2) Save in so far as the articles of a company make other provision in that behalf (not being a provision avoided by the foregoing sub-section) a meeting of the company (other than an adjourned meeting) may be called:

(*a*) in the case of the annual general meeting, by twenty-one days' notice in writing; and

(*b*) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution, by fourteen days' notice in writing in the case of a company other than an unlimited company and by seven

days' notice in writing in the case of an unlimited company.

(3) A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in the last foregoing sub-section or in the company's articles, as the case may be, be deemed to have been duly called if it is so agreed:

(*a*) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and

(*b*) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than ninety-five per cent. in nominal value of the shares giving a right to attend and vote at the meeting, or, in the case of a company not having a share capital, together representing not less than ninety-five per cent. of the total voting rights at that meeting of all the members.

The number of days must be clear (*cf.* Mercantile Co. *v.* International Co. of Mexico, 1893, 1 Ch. 484 *n*, Hector Whaling Co., 1936, Ch. 208) and consequently Clause 50 of Table A, which deals with the length of notice of general meetings, provides *inter alia*:

The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given. . . .

If the articles provide that general meetings are to be convened by notice through the post, a notice by advertisement would be irregular, and *vice versa*. Table A, Clause 131, provides that service of a notice of a meeting if sent by post is deemed to have been effected at the expiration of twenty-four hours after the letter containing the same is posted. Other forms of articles provide that the notice is to be deemed to be served at the time when it is put into the post.

Where debentures are secured by a trust deed, provisions for the convening of meetings of the debenture holders will normally be set out in the trust deed or in the debentures. If no such regulations are set out, advertisement in suitable newspapers convening a meeting will be sufficient notice, and will be given on the day on which the advertisement appears (Sneath *v.* Valley Gold, Limited, 1893, 1 Ch. 477).

The method of serving notices prescribed by Table A is as follows:

131. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of twenty-four hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

Where, by the articles, a notice of a call on a member may be served by sending it through the post in a letter addressed to such member at his registered place of abode, it is not necessary to follow literally the address on the register, but a substantially accurate designation of the registered place of abode is enough (Liverpool Marine Insurance Co. *v.* Haughton, 1875, 23 W. R. 93). The same principle would presumably apply in the case of notice of a meeting.

Notices must be issued by the proper authority.—This is usually the directors who are in most cases responsible for convening the annual general meeting and empowered to convene extraordinary meetings (*cf.* Clause 49 of Table A, *ante*, p. 89). Where, however, the articles make no provision for the calling of meetings two or more members holding not less than one-tenth of the issued share capital, or if the company has not a share capital, not less than 5 per cent. in number of the members of the company, may call a meeting (Section 134 (*b*)).

" 'The directors may, whenever they think fit.' That means, I apprehend, that the directors may do it at a meeting properly convened. I do not think it means that any directors may, without consulting the others, call an extraordinary meeting" (Browne *v.* La Trinidad, 1887, 37 Ch. D., at p. 17).

A notice issued by the secretary without the authority of a resolution of the directors duly assembled at a board

meeting is invalid (*re* Haycraft Gold Reduction Co., 1900, 2 Ch. 230), and even where a meeting is requisitioned under Section 132 (*ante*, p. 86) the secretary cannot validly summon a meeting without the authority of the board of directors (*re* State of Wyoming Syndicate, 1901, 2 Ch. 431). A notice issued without such authority, either because no instructions have been given by the board for its issue or because the instructions were given by an improperly constituted board, may become a good notice if adopted and ratified by a proper board meeting held prior to the general meeting. "The question is whether, although the notice was not authorised beforehand, it has been so ratified now as to make it a good and valid notice. In my opinion it has. The principle of the cases, which I do not propose to go through, is that the ratification of an act purporting to be done by an agent on your behalf dates back to the performance of the act" (Hooper *v.* Kerr, 1900, 83 L. T., p. 730).

Clause 105 of Table A provides that all acts done by any meeting of directors or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director. An article in this form may validate a meeting held on notices sent out by an irregularly constituted board (Transport Ltd. *v.* Schomburg (1905), 21 T. L. R. 305). As to what extent such an article will be effective, see Morris *v.* Kanssen, 1946, A. C. 459.

Notices should be signed by the secretary, qualified by the words "By order of the board," and the secretary should see that the board meeting which has authorised the convening of a general meeting was itself properly convened and that a quorum of directors was present.

As to the power of members to give notice of a meeting in certain circumstances, see *ante*, p. 87.

Subject to any limitations in the articles, all mem-

bers on the register are entitled to receive notice of meetings, and if any person entitled to attend is not regularly summoned the meeting is irregular and its proceedings invalid (Smyth *v.* Darley (1849), 2 H. L. C. 789).—If, however, a meeting is irregularly convened, a person who attends and takes part may be unable subsequently to complain of the irregularity. At an adjourned general meeting, of which adjournment notice was given by circulars sent to the shareholders, but not by advertisement, as required by the deed of settlement, it was resolved to make a call. A shareholder who was present and voted at the adjourned meeting was held not entitled to take advantage of the irregularity of the notice (*re* British Sugar Refinery Co. (1857), 26 L. J. Ch. 369).

Articles, however, often prescribe that certain classes of members shall not be entitled to receive notice: *e.g.* the holders of preference shares in cases where the preference shares do not confer the right to vote or members who are in arrears with their calls. If the preference shares do not confer the right to vote, the holders will apparently not be entitled to notice even though there is no such special provision (*re* Mackenzie, 1916, 2 Ch. 450. See Warden *v.* Hotchkiss, 1945, 1 Ch. at p. 278). To exclude all doubt, articles which provide that certain classes of members are not to have a vote also often provide that they shall not be entitled to receive notices of or attend meetings. Except as provided by the Articles, all members entitled to vote are entitled to receive notices of, and attend, general meetings.

To guard against miscarriage of a notice, articles usually contain an article similar to Clause 51 of Table A which provides that "the accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting."

In the case of joint holders all must be given notice unless the articles, as they almost invariably do, provide that this shall not be necessary. Clause 132 of Table A provides:

A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.

In the absence of any provision in the articles, the executors or administrators of a member when not themselves registered as members are not entitled to notice, for they are not members of the company. Clause 134 of Table A (*post*, p. 121), however, provides that notice is to be given to a personal representative of a member if the member but for his death would have been entitled to receive the notice. Articles, however, frequently provide that notice need not be given to such persons.

In the absence of some express provision in the articles that a bankrupt is no longer a member and therefore unable to vote, the bankrupt remains a member so long as his name is on the register, and he is able to exercise the votes attributable to his shares, notwithstanding that by taking appropriate steps under the appropriate provisions the trustee in bankruptcy might be able to secure registration of himself in respect of the shares (Morgan *v.* Gray, 1953, Ch. 83). A company cannot, therefore, treat a member who is known to be bankrupt in any other manner than they treat other members, whether in connection with sending notices to him or accepting his votes.

The mere presence at the meeting of persons not entitled to be present, not objected to by those who are so entitled, does not by itself invalidate a meeting (Carruth *v.* Imperial Chemical Industries, 1937, A. C. 707).

The auditor is entitled to attend any general meeting and to receive all notices and other communications relating thereto. He is also entitled to be heard on any part of the business affecting him as auditor (Section 162 (4)).

Under Section 5 notice of a resolution for altering the objects clause of a memorandum has to be given to the holders of any debentures which entitle their holders to object to any such alteration, *i.e.* debentures secured by a floating charge and issued before the 1st December, 1947, or debentures so secured forming part of the same series

as any debentures issued before that date. In default of provisions as to giving notice to the holders of such debentures it is to be given in the same way as notice is given to members of the company.

Service of notices.—Articles usually provide for the method of serving notices on the members. In so far as they do not make any provision for service of notices of meetings every such notice must be served on every member of the company (not merely, it will be noted, those entitled to vote) in the manner in which notices are required to be served by the Table A for the time being in force (Section 134 (*a*)).

The clauses of Table A dealing with the service of notices are as follows:

131. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of twenty-four hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

132. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.

(It has been held in Ireland that if the officers of a company have actual knowledge that one of two joint shareholders is dead, the company cannot rely upon a formal notice sent to the registered address of the deceased for the purpose of basing upon it a resolution forfeiting an unclaimed dividend (Ward *v.* Dublin North City Milling Co., 1919, 1 I. R. 5)).

133. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like

description, at the address, if any, within the United Kingdom supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

134. Notice of every general meeting shall be given in any manner hereinbefore authorised to:

(*a*) every member except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them;

(*b*) every person upon whom the ownership of a share devolves by reason of his being a legal personal representative or a trustee in bankruptcy of a member where the member but for his death or bankruptcy would be entitled to receive notice of the meeting; and

(*c*) the auditor for the time being of the company.

No other person shall be entitled to receive notices of general meetings.

It is competent for articles to exclude the persons mentioned in paragraph (*b*) of this clause from the right to receive notices and this is frequently done. The method of giving notice to the persons mentioned in paragraph (*b*) prescribed in Table A is as follows:

133. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within the United Kingdom supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

Where the articles do not provide as Table A does that notice need not be given to members whose only address is outside the United Kingdom but also provide that a notice will be deemed to be delivered when the letter containing it will be delivered in the ordinary course of post, notice need not be given to members with registered addresses abroad (*re* Warden and Hotchkiss, Ltd., 1945, Ch. 270).

The right of a person who is an enemy at common law or under the Trading with the Enemy Act to receive notices is suspended so long as he remains an enemy and meetings are properly convened though no notice has been served upon a person who, if he were not an enemy, would be entitled to notice (*re* Anglo-International Bank, 1943, Ch. 233).

Notices must state the real nature of the business to be transacted.—The notice of a general meeting must disclose all facts necessary to enable the shareholder receiving it to determine in his own interest whether or not he ought to attend the meeting. The vote of the majority at a general meeting, as it binds both dissentient and absent shareholders, must be a vote given with the utmost fairness. Not only must the matter be fairly put before the meeting, but the meeting itself must be conducted in the fairest possible manner (Tiessen *v.* Henderson, 1899, 1 Ch., at p. 861).

A notice must give at any rate a fair, candid and reasonable explanation of the business intended to be transacted (Kaye *v.* Croydon Tramways, 1898, 1 Ch. 358). In Normandy *v.* Ind, Coope & Co., 1908, 1 Ch. 84, it was held that notice of a resolution to alter the articles (*inter alia*) in various ways favourable to the directors and increasing their powers was not satisfactory, there being no mention of those alterations in the notice, although the notice stated that the proposed new articles might be seen at the company's office and that a copy would be forwarded to shareholders on application. Notice of an annual general meeting is not, however, required to specify any business declared by the articles not to be special business (see *post*, p. 122). A meeting has no power to pass any resolution outside the scope of the notice.

Notice of an annual general meeting must specify the meeting as such (Section 131), and when it is proposed to pass a special or extraordinary resolution at any meeting the notice of the meeting must specify the intention to propose the special or extraordinary resolution as a special

or extraordinary resolution as the case may be (Section 141), and since it has to specify this intention in regard to "the resolution" the words of the proposed resolution must be set out in the notice. No amendment can be made to any such proposed resolution, for if the resolution as passed is different from the one specified in the notice, notice of the intention to propose the resolution actually passed will not have been given as required by Section 141, and it will not therefore be a special or extraordinary resolution, even if passed by the required majority (McConnell *v.* Prill & Co., 1916, 2 Ch. 57). An ordinary resolution need not be passed in the exact terms of the notice, and under all ordinary forms of articles there is no need to specify a proposed ordinary resolution. It is sufficient to specify the nature of the business. In Betts & Co. *v.* Macnaghten (1910, 1 Ch. 430) the notice stated that the meeting was for the purpose of considering the following resolution with such amendments and alterations as should be determined upon at that meeting. "That A, B, and C be appointed directors." The notice was taken as read at the meeting and A, B, C and two other persons were appointed directors. It was held that the notice sufficiently indicated the special business to be transacted, and that the particularity of the names did not put greater restriction upon the meeting than there would have been had the notice been in general terms: and accordingly all five were properly appointed. So, too, an amendment to a resolution which has been set out in the notice will not invalidate the resolution even if the proposed resolution is a special resolution. But this will only apply if the amendment renders the resolution less, and not more, onerous, *e.g.* where the remuneration to be paid to directors is, under the amended resolution, less than that proposed in the notice (Torbuck *v.* Westbury (Lord), 1902, 2 Ch. 871).

An annual general meeting may transact special business if the notice provides for it (Graham *v.* Van Diemen's Land Co., 1856, 26 L. J. Ex. 73) and there is

nothing in the regulations confining special business to extraordinary meetings. Unless the purport of the special business to be transacted is stated in the notice convening the meeting, the meeting is invalid so far as the special business is concerned (Lawes' Case, 1852, 1 De G. M. & G. 421; Kaye *v.* Croydon Tramways Co., 1898, 1 Ch. 358).

The transaction of some business at a meeting outside the objects specified in the notice will not make the whole meeting irregular (British Sugar Refinery Co. (1857), 26 L. J. Ch. 369).

Where the notice deals with two separate resolutions the failure of the one will not invalidate the other, even in cases where they are closely associated (Cleve *v.* Financial Corporation, 1873, L. R., 16 Eq. 363).

Once a resolution for a member's voluntary winding up has been passed the company can without notice appoint a liquidator. Consequently where a notice was given of a resolution to wind up and to appoint *A* as liquidator and the winding up resolution was passed but *B* was appointed liquidator, that appointment was good (Trench Tubeless Tyre Co., 1900, 1 Ch. 408).

Notice of a meeting adjourned to a fixed date is not necessary, unless the articles otherwise provide, for it is merely a continuation of the original meeting and will be confined to business specified in the original notice (Kerr *v.* Wilkie, 1860, 1 L. T. 501). Clause 57 of Table A provides that:

> . . . no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

When a meeting is adjourned it is customary to fix the day and time for the adjourned meeting. When the

adjournment does not exceed the time specified in the articles, notice is not necessary.

At an adjourned meeting business which was unfinished at the first meeting may alone be transacted. To transact other business a separate meeting should be convened to be held immediately after the adjourned meeting.

But as regards the statutory meeting Section 130 (8) provides that notice may be given either before or after the former meeting of any resolution to be considered at the adjourned meeting, and such resolution may be passed if such notice has been given in accordance with the articles (*ante*, p. 83).

Authentication of Notices.—A notice must be properly authenticated. Section 36 provides that a document requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company, and need not be under its common seal. Section 455 provides that a *document* includes a *notice*.

Meeting ordered to be held by the Court.—Section 135 provides:

(1) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the articles or this Act, the Court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held, and conducted in such manner as the court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient; and it is hereby declared that the directions that may be given under this sub-section include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held, and conducted in accordance with an order under the foregoing sub-section shall for all purposes be deemed to be a meeting of the company duly called, held, and conducted.

Annual general meetings may be ordered to be held by the Board of Trade (*ante*, p. 86).

Notice of Resolution, etc., circulated on requisition of members.—In the ordinary case the business specified in the notice will be that which the conveners of the meeting think ought to be transacted.

Now, however, Section 140 provides for the giving of notice of resolutions and the circulation of statements relating to business proposed to be transacted at the instance of persons other than the conveners of the meeting. Sub-section (1) of the section is as follows:

> Subject to the following provisions of this section it shall be the duty of the company, on the requisition in writing of such number of members as is hereinafter specified and (unless the company otherwise resolves) at the expense of the requisitionists:
>
> (*a*) to give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting;
>
> (*b*) to circulate to members entitled to have notice of any general meeting sent to them any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

Under this sub-section the requisitionists can only have notice of a resolution given for an annual general meeting; they can, however, secure the circulation of a statement relating to any proposal which is to be considered at any general meeting.

The requisition must be given by the holders of not less than one-twentieth of the total voting rights exercisable at the meeting to which the requisition relates or by not less than one hundred members holding shares in the company on which there has been paid up an average sum, per member, of not less than £100 (Sub-section (2)).

Sub-sections (3) and (4) provide for the method of serving the notice or statement, the manner and time in which the requisition must be made, and also for the deposit or tender with the requisition of a sum reasonably

sufficient to meet the company's expenses in giving effect thereto.

If the company or any other person who claims to be aggrieved by the terms of any such statement applies to the Court and the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter, the statement need not be circulated (Sub-section (5)).

The articles usually provide what matters may be dealt with at the annual general meeting without notice (*post*, p. 122), but Sub-section (6) provides that notwithstanding anything in a company's articles the business which may be dealt with at an annual general meeting is to include any resolution notice of which has been given in accordance with the section, and notice is to be deemed to have been so given notwithstanding the accidental omission, in giving it, to one or more members.

This provision is new and is intended to enable members other than the directors to cause matters to be ventilated at the annual general meeting and to afford members an opportunity of bringing their views on any proposed resolution to the other members before the actual meeting. In practice it has often been found that at the meeting it is too late to affect the question by any argument however well founded, for by that time the board is probably armed with sufficient proxies to secure the passage of the resolution.

Notice of proposal to pay compensation to directors.—The Act contains stringent provisions as to disclosing proposals to pay compensation for loss of office to directors. Under Section 191 a company may not make any payment to a director in compensation for loss of office or in consideration of or in connection with his retirement from office unless the particulars as to the proposed payment and the amount are disclosed to the members of the company and the proposal for the payment is approved by the company. When any such payment, therefore, is proposed, a meeting of the company

will have to be held and the notice will have to contain the particulars required by this section.

Section 192 requires similar disclosure of particulars and approval by the company of any payment made to any director of compensation for loss of office or as consideration for or in connection with his retirement from office when any such payment is proposed to be made in connection with the transfer of the whole or any part of the undertaking and property of the company. The section extends to payments made by persons other than the company.

Section 193 deals with the situation when a similar payment is proposed to be made to a director in connection with transfers of shares in the company resulting from certain classes of offers to purchase the shares mentioned in the section which include (*inter alia*) offers conditional on acceptance to a given extent. In such cases it is the duty of the director to see that the particulars and amount of the proposed payment are disclosed in the offer to purchase the shares. Further, under this section any such proposed payment must be approved by a meeting of the holders of all the shares to which the offer relates and of all other shares of that class or those classes of shares.

Sub-section (5) of the section provides that if at a meeting summoned for the purpose of approving such a payment a quorum is not present on the original day and after one adjournment, the payment shall be deemed to have been approved.

CHAPTER 13

THE CHAIRMAN

IN the absence of any provision in the articles as to who is to be chairman of a meeting any member elected by the members present may be chairman (Section 134 (*d*)).

(1) **Appointment.**—The articles generally provide who is to take the Chair at meetings in a way similar to the provisions of Table A, which are as follows:

55. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act the directors present shall elect one of their number to be chairman of the meeting.

56. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

(2) **Authority.**—The authority which a chairman has is usually delegated to him by the company by its articles or by that meeting by which he was appointed. Where a number of persons assemble and put a man in the Chair they devolve on him by agreement the conduct of that body. In general, a chairman often forgets when presiding over a general meeting of shareholders that he is acting as its representative and not that of the directors. His authority, which is collected from the meeting, enables him to do everything required to ascertain the opinion of the majority and to allow a proper discussion of the questions to be decided. At a meeting of shareholders it is not competent for a majority to come determined to vote in a particular way on any question and to refuse to hear any

arguments to the contrary (Const *v.* Harris, 1824, T. & R. 496).

(3) **Duties.**—Unquestionably it is the duty of the chairman to preserve order; to conduct the proceedings in a proper manner; and to take care that the sense of the meeting is properly ascertained with regard to any question which is properly before the meeting (National Dwellings Society *v.* Sykes, 1894, 3 Ch. 159).

The real object of a meeting is not so much to discuss matters, as to come to a decision on any question which is properly before it. "It is on him" [the chairman] "that it devolves both to preserve order in the meeting and to regulate the proceedings so as to give all persons entitled a reasonable opportunity of voting. He is to do the acts necessary for these purposes on his own responsibility, and subject to being called upon to answer for his conduct if he has done anything improperly" (R. *v.* D'Oyly, 1840, 12 A. & E., 139).

In the absence of express provisions in the regulations, "the details of the proceedings must be regulated by the persons present and by the chairman, and if his decision is quarrelled with it must be regulated by the majority of those present" (Wandsworth Gas Light Co. *v.* Wright, 1870, 22 L. T., 404). But where the articles expressly provide for the conduct of meetings, the provisions contained therein must be followed.

(4) **Powers.**—The chairman must exercise his powers impartially. It is his duty to conduct the meeting in such a way that the business thereof may be facilitated and the results clearly and well defined. It is the bounden duty of a chairman to maintain his ruling on points of procedure. But if the chairman's ruling be wrong he is, of course, subject to being called upon to answer for his conduct, and legal proceedings may follow which result in the proceedings being declared invalid (Henderson *v.* Bank of Australasia, 1890, 45 Ch. D. 330).

The chairman of a general meeting has *prima facie* authority to decide all incidental questions which arise at

such meeting and necessarily require decision at the time (*re* Indian Zoedone Co., 1884, 26 Ch. D. 70).

"Where a chairman frustrates the business of a meeting by wilfully and without good reason preventing that business from being considered, the meeting may in view of his gross violation of duty supersede him as chairman and go on to transact the business. But if in good faith the chairman gives a decision upon a matter of difficulty, such as has arisen in connection with the notice in this case, I am not prepared to hold that his decision can be ignored and overturned there and then. In my opinion in such a case his decision must stand until it is set aside by the Court, or by a general meeting properly convened for that purpose" (Melville *v.* Graham-Yooll, 1936, S. L. T. 54).

If the chairman wisely or unwisely takes responsibility, he must necessarily take the consequences. If he acts reasonably, impartially, *bona fide* and in the interests of the meeting, paying some regard to the rights of minorities, he will usually steer clear of those risks which every fair-minded chairman avoids, particularly if he remembers that, apart from the articles, he collects his authority from the meeting.

The chairman has the following powers:

(*a*) *To regulate the course of the proceedings at the meeting.*

In case of dispute he is entitled to determine who should address the meeting, and protect the speaker from interruption. He is also entitled to prevent discussion taking place which is not relevant to the business of the meeting.

The business transacted must come within the scope of the notice given, and he should refuse to allow any proposed resolution to be put to the meeting which does not come within the scope of the notice; but he is bound to allow the proposal of all legitimate and germane resolutions and amendments, and a refusal to do so will invalidate the

proceedings, because such refusal may amount to the withdrawal of a material and relevant question from the meeting. "I think, then, that the chairman was entirely wrong in refusing to put the amendment, and that the resolutions which were passed cannot be allowed to stand, because the chairman, under a mistaken idea as to what the law was which ought to have regulated his conduct, prevented a material question from being brought before the meeting" (Cotton, L. J., in Henderson *v.* Bank of Australasia, 45 Ch. D., at p. 346).

Amendments to resolutions must also come within the scope of the notice convening the meeting and conform to any provisions of the articles as to notice or other requirements. Much difficulty may arise from amendments. Notice of an amendment to an ordinary resolution is not necessary, at any rate so long as the amendment cuts down the effect of the resolution notice of which was originally given or if the notice stated that the resolution might be passed with such alterations as should be agreed upon (Betts & Co. *v.* Macnaghten, 1910, 1 Ch. 430). No amendment radically altering the originally proposed resolution should be accepted. When the chairman rules an amendment out of order there is no obligation on the part of the mover of the amendment to contest that ruling or to leave the meeting. It is not necessary for the latter to keep up an altercation with the chairman, nor does he lose his right by acting under the ruling of the chairman (Henderson *v.* Bank of Australasia, *ante*).

No amendment should be accepted to a special or extraordinary resolution (see *ante*, p. 103).

Where notice has been given of several resolutions, each resolution must, if any member so requires, be put separately and not *en bloc*; the poll thereon must in any event be taken separately

(Blair Open Hearth Furnace Co. *v.* Reigart, 1913, 108 L. T. 665).

By Section 183 except in the case of a private company the motion for the appointment of two or more directors cannot be made by a single resolution unless that course is resolved upon by the meeting without a dissentient. If it is not so resolved the appointment of each director must be resolved upon by a separate resolution.

If there is the slightest doubt as to whether an amendment is in order or not, it should be allowed to be put; this will safeguard the ultimate resolution if it turns out in the end that the amendment is in fact relevant and germane to the resolution. The chairman has often to make up his mind at once upon the validity of amendments, and when he is fairly certain that the amendment will be lost there is no real harm done in allowing an amendment which he thinks not covered by the notice of the meeting. A chairman should not reject amendments which have no chance of success, and thereby endanger the original resolution on the ground of a technical objection, which may have no substance in fact.

(*b*) *To apply the closure with consent of meeting.*—When the views of the minority have been heard, it is competent to the chairman, with the sanction of a vote of the meeting, to declare the discussion closed, and to put the question to the vote (Wall *v.* London & Northern Assets Corporation, 1898, 2 Ch. 469).

(*c*) *To adjourn the meeting.*—See *Chapter* 18, *post.*

(*d*) *To make arrangements for taking a poll* (see *post*, p. 146) *and to receive or reject proxies.*—His decision as to the rejection of proxies will be decisive until reversed by the Court.

(*e*) *To give a casting vote.*—The chairman has no casting vote unless it is so provided in the articles. A casting vote may be exercised only if there is

an equality of votes, *i.e.* equality of valid votes. If the chairman does not exercise his casting vote, the motion, of course, is not carried. A chairman may also have an ordinary vote if he is a member of the company, as he usually is. A chairman may apparently give a contingent or hypothetical vote, to come into operation if in the course of subsequent proceedings it should appear that there has been an equality of valid votes (Bland *v.* Buchanan, 1901, 2 K. B. 75).

Clause 60 of Table A provides:

> In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

(*f*) *To declare the result of voting.*—The chairman's declaration that an extraordinary or special resolution is carried is conclusive unless a poll is demanded (Section 141 (3), *post*, p. 136). Clause 58 of Table A goes further and provides that unless a poll is demanded in one of the ways provided for by the clause (*post*, p. 144) a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

The chairman's declaration, if properly made, will, under articles in this form be conclusive, and will prevent the question being reopened in legal proceedings even if evidence is forthcoming that the chairman's declaration was wrong (Arnot *v.* United African Lands, 1901, 1 Ch. 518), unless there is an apparent error, *e.g.* where he states the number of votes given and they are insufficient (*re*

Caratal (New) Mines, 1902, 2 Ch. 498) or it is plain on the face of the proceedings that the requisite majority has not been obtained (*re* Clark & Co., 1911, S. C. 243), or there being no apparent opposition to a proposal he omits to put it to a show of hands (Citizens Theatre Ltd., 1946, S. C. 14).

Where articles provided that if votes were not disallowed at the meeting they should be good for all purposes, it was held in Wall *v.* London & Northern Assets Corporation (No. 2) (1899, 1 Ch. 550) that in the absence of bad faith or fraud the resolution could not be afterwards impeached on the ground that votes were improperly received. In Wall *v.* Exchange Investment Corporation (1926, Ch. 143) it was held that the decision of the chairman who, in the *bona fide* exercise of the power conferred upon him by the articles, had refused to disallow a vote by proxy to which objection had been taken at the meetings, was final and would not be reviewed by the Court. In Betts & Co. *v.* Macnaghten (1910, 1 Ch. 430), it was held that, notwithstanding a declaration by the chairman, the notice of the meeting is part of the proceedings and may be looked at to see if the resolution is in accordance with the notice. If it is not, the chairman's declaration that the resolution was passed is not conclusive. Neither is a chairman's declaration conclusive where there is no quorum, since there would be no meeting, and a chairman has no *locus standi* except at a meeting, *i.e.* a properly constituted meeting.

CHAPTER 14

QUORUM

IF the articles do not lay down the number of members necessary to form a quorum at meetings of a company, it is provided by paragraph (*c*) of Section 134, that in the case of a private company two members, and in the case of any other company three members, personally present shall be a quorum.

Only persons entitled to vote are counted in a quorum (Young *v.* South African etc. Syndicate, 1896, 2 Ch. 268, *cf. re* Greymouth—Point Elizabeth Railway Company, 1904, 1 Ch. 32).

Articles generally make provision as to the number of members which will constitute a quorum.

Clause 53 of Part I of Table A is as follows:

No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members present in person shall be a quorum.

If the articles so permit, a person present by proxy may be counted towards the quorum.

Clause 4 of Table A, Part II, which is applicable to private companies and is alternative to Clause 53 of Part I, does so permit and is as follows:

No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided two members present in person or by proxy shall be a quorum.

Clause 54 of Table A provides:

If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time

and place as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

A corporation present by representative is regarded as being personally present, for Section 139 provides as follows:

(1) A corporation, whether a company within the meaning of this Act or not, may:

(*a*) If it is a member of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company.

(*b*) If it is a creditor (including a holder of debentures) of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised as aforesaid shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual shareholder, creditor, or holder of debentures of that other company.

By virtue of Section 455 (3) corporation includes a foreign company.

A corporation whose representative under this section attends a general meeting is regarded as personally present and not as present by proxy. In *re* Kelantan Coco Nut Estates, Limited (1920, W. N. 274), articles provided that *two members personally present should be* a quorum. One member of the company and one representative of a company under Section 139 were present. It was held that the meeting was validly constituted.

Effect of transacting business without a quorum.—The prescribed quorum—whatever it may be—must be present *before* a meeting can proceed to business. Any resolution passed at a meeting where no quorum was

present is invalid (Howbeach Coal Co. *v.* Teague, 1860, 5 H. & N. 151). Article 53 of the 1948 Table A provides that no business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. Under this article, when read in conjunction with Article 54 (which covers occasions when the quorum is not present within half an hour) it was decided in *re* Hartley Baird, 1955, Ch. 143, that provided that members sufficient in number to form a quorum are present when the meeting proceeds to business it will not cease to be a valid meeting if some persons withdraw so that those present fall below the number required to constitute a quorum. Upon Wynn-Parry, J's reasoning it would appear that even in the absence of a provision in the terms of Article 54, Article 53 requires the quorum when the meeting proceeds to business, but not otherwise. A different decision was reached in Scotland (Henderson *v.* James Louttit & Co. (1894), 21 R. (Ct. of Sess.) 674, which Wynn-Parry, J. declined to follow).

Articles provided that no business should be transacted at a general meeting unless a quorum, consisting of two members, was present. At a general meeting, which was attended by two persons, one a shareholder, the other the executor of a deceased shareholder, who was entitled to be entered on the register as a shareholder, but had not in fact been registered and was not therefore a member, a resolution was passed which fixed the remuneration of L, a director, at £8 a week. Subsequently a receiver was appointed and he sought a declaration that the directors were liable to pay to the company the sum of £568 which had been paid to L under the invalid resolution. It was held that the directors were jointly and severally liable to repay that sum to the company (*re* Franklin & Son, 1937, 157 L. T. 188).

One person cannot constitute a general meeting.—Normally one person cannot constitute a meeting. This was decided in a case where at a meeting of a company,

only one shareholder attended, holding the proxies of other shareholders. He took the chair and concluded the proceedings by proposing a vote of thanks to himself. There being no "meeting" it followed that all resolutions "passed" thereat were invalid. "It is clear that, according to the ordinary use of the English language, a meeting could no more be constituted by one person than a meeting could have been constituted if no shareholder at all had attended" (Sharp *v.* Dawes, 1876, 2 Q. B. D., p. 29). In *re* Sanitary Carbon Co. (1877, W. N. 223) it was held, following Sharp *v.* Dawes, that a meeting of a company attended by one shareholder only, he being the proxy of *all* the other members, is not validly constituted. (This was followed in *re* Keyes, 1949, 3 D. L. R. 299). Accordingly, under an article such as Clause 54 of Table A one member cannot normally constitute an adjourned meeting. The phrase "members" does not include the singular, though possibly one member personally present and one present by proxy would be sufficient. See Daimler Co. *v.* Continental Tyre Co. (1916, 2 A. C., at p. 324). This would seem to follow in the case of a private company to which Clause 4 in Part II of Table A applied.

If the articles allow a member present by proxy to count towards a quorum, the presence of one member and one non-member holding proxies would constitute a meeting where a quorum consisted of two persons.

But it is now recognised that one person can, in exceptional circumstances, constitute a valid meeting. The rule to the contrary does not, for instance, apply to the meetings of a class of shareholders. A company under its memorandum required the sanction of a resolution of a separate meeting of preference shareholders before an increase of capital could validly be made (see *ante*, p. 89). All preference shares were held by one person, who signed a document in the minute book recording his assent to the issue. It was held that the word "meeting" in the memorandum must be taken to have been used not in its strict sense, but as applicable to the case of a single shareholder.

"In an ordinary case I think it is quite clear that a meeting must consist of more than one person. . . . I think I may very fairly say that where one person only is the holder of all the shares of a particular class, and as that person cannot meet himself, or form a meeting with himself in the ordinary sense, the persons who framed this memorandum having such a position in contemplation must be taken to have used the word meeting not in the strict sense in which it is usually used, but as including the case of one single shareholder" (East *v.* Bennett Bros., 1911, 1 Ch., p. 163).

The same argument can, it is submitted, apply to a meeting of a company. For although under the Act the members of a company must be at least two (and in the case of a public company at least seven) it is quite possible for one member to hold all the shares carrying the right to attend and vote at meetings of the company, and for the other members to hold shares carrying no such rights. Moreover, in the case of a private company to which Clause 4 in Part II and Clause 54 in Part I of Table A apply, it would seem to follow that recognition is given to one member (present in person or by proxy) being adequate for forming a quorum at an adjourned meeting.

There are moreover two statutory exceptions to the rule in the case of general meetings. Under Section 131 (2) (*ante*, p. 86) where the Board of Trade direct the calling of a general meeting of the company the directions given may include a direction that one member present in person or by proxy shall be deemed to constitute a meeting.

Under Section 135 (*ante*, p. 105) a similar direction may be given by the Court when the Court orders a meeting of a company to be held when it is impracticable to conduct a meeting in the manner prescribed by the articles or the Act.

(3) Special class quorum.—In the case of class meetings (*ante*, p. 89) Clause 4 of Table A provides that the provision of those regulations as to general meetings shall apply but so that a quorum shall be two persons

holding or representing by proxy at least one-third of the issued shares of the class.

Other articles contain similar provisions, but even if they contain a provision similar to that of Clause 54 of Table A as to the quorum at meetings adjourned for want of a quorum in the first instance, that provision will not apply to class meetings merely by virtue of the general provision that the regulations as to general meetings are to apply to class meetings. If that is intended to be the case the articles must specifically so provide (Hemans *v.* Hotchkiss Ordnance Co., 1899, 1 Ch. 115). Unless they do so provide, no valid meeting of the class can be held until the quorum prescribed by the article dealing with class meetings is present.

CHAPTER 15

BUSINESS AT ANNUAL GENERAL MEETINGS

ARTICLES usually provide that all business is to be special business except certain specified matters dealt with by the annual general meeting. Clause 50 of Table A provides (*inter alia*) that notice of a general meeting is in the case of special business to specify the general nature of that business and Clause 52 of Table A is as follows:

52. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets, and the reports of the directors and auditors, the election of directors in the place of those retiring and the appointment of, and the fixing of the remuneration of, the auditors.

In the absence of any such provisions in the articles all the business to be transacted must be specified in the notice, but most articles have provisions corresponding to Clauses 50 and 52 of Table A. Thus when the company's articles contain these or similar provisions, the matters declared not to be special business may be transacted at an annual general meeting but not at other general meetings, although not specified in the notice convening the meeting.

(1) Reading the notice convening the meeting and the auditors' report.—Meetings are usually opened by the secretary reading the notice convening the meeting together with the auditors' report which must in all circumstances *be read, not taken as read*, for Sub-section (2) of Section 162 provides that the auditors' report on the company's accounts shall be read before the company in general meeting and shall be open to inspection by any member. There is no statutory requirement for reading the notice, although it is usual. Where the notice refers

to special business to be transacted it should be read or agreed to be taken as read. Either course will result in the notice forming part of the *res gestæ* of the meeting and even if the declaration of the chairman is conclusive in an ordinary case (see *ante* p. 114) the notice may then be looked at to see whether the meeting purported to transact business outside the scope of the notice (Betts & Co. *v.* Macnaghten, 1910, 1 Ch. 430). Sometimes the minutes of the previous meeting are then read and formally verified as correct, but, unless required by the articles, this proceeding at a general meeting is unnecessary.

(2) **Consideration of Accounts, etc.**—Under Section 148, the directors must once at least in every calendar year lay before the company in general meeting a profit and loss account for the period since the preceding account made up to a date generally not more than nine months before the meeting and a balance sheet as at that date, and this is almost invariably done at the annual general meeting. If the company has subsidiaries, group accounts must at the same time be laid before the company in general meeting (Section 150).

In addition there is to be attached to the balance sheet laid before the company in general meeting the directors' report. Section 157 (1) and (2) provide:

(1) There shall be attached to every balance sheet laid before a company in general meeting a report by the directors with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend, and the amount, if any, which they propose to carry to reserves within the meaning of the Eighth Schedule to this Act.

(2) The said report shall deal, so far as is material for the appreciation of the state of the company's affairs by its members and will not in the directors' opinion be harmful to the business of the company or of any of its subsidiaries, with any change during the financial year in the nature of the company's business, or in the company's subsidiaries, or in the classes of business in which the company has an interest, whether as member of another company or otherwise.

Under Section 158 copies of the balance sheet to be laid before the company and of the documents required to be

annexed thereto, together with a copy of the auditors' report, must in the case of a company having share capital, be sent to every member of the company and every debenture holder of the company whether they are entitled to receive notices of meetings or not. They need not be sent to a member or debenture holder who is not entitled to receive notices of meetings if the company does not know his address, and if joint holders of shares and debentures are not all entitled to notice of meetings the copies need only be sent to one such joint holder. In the case of companies not having a share capital these documents need not be sent to members or debenture holders who are not entitled to receive notices of meetings of the company.

The accounts and the directors' report are often, by consent or custom, taken as read.

The chairman usually proceeds to make some comments on the accounts, explains the position of the company, gives such further information concerning its affairs as he thinks may properly be made known, and concludes by moving that the report and accounts be adopted. This is usually seconded by another director with a few remarks, and then members present at the meeting are free to comment upon or criticise the report, the accounts, and the chairman's speech.

So far as it can be done without injury to the interests of the company, the directors should answer freely all inquiries as regards the accounts and the company's affairs. But they are not bound to answer in general meeting any questions that they consider it undesirable in the best interests of the company to answer.

Usually at an annual general meeting, unless steps have been previously taken by dissatisfied members there is very little that the members can do if dissatisfied with the directors' report or the conduct of the directors. They can vote against the resolution for the adoption of the report, but even if the resolution is lost that has no effect other than indicating the disapproval of a majority of the meeting. If it is lost an attempt is sometimes made

by the dissatisfied members to appoint a committee of inspection from among their number to look into the affairs of the company, but this cannot be done without proper notice of a resolution therefor having been given. Even if one could be appointed it would have practically no powers. So long as the directors remain the directors of the company they retain their powers as such, and the company cannot remove the control of the company's affairs from them (Automatic Self-Cleansing Filter Co. *v.* Cunninghame, 1906, 2 Ch. 34).

In some cases, however, where the meeting proves hostile the directors may agree to give certain information to a committee appointed by the dissatisfied members and to adjourn the meeting until that has been done. They are not, however, bound to do so.

Under Section 165 the Board of Trade must appoint one or more competent inspectors to investigate the affairs of a company and to report on them in such manner as the board direct if the company by a special resolution or the Court by order declares that its affairs ought to be so investigated.

Under Section 164 the Board of Trade may also appoint such inspectors on the application of a specified proportion of the members of the company. Where, however, the majority of the members of a company disapprove of the conduct of the directors they will presumably avail themselves of the power conferred by Section 184 of removing the directors by ordinary resolutions and appointing others in their places by like resolutions (see *post*, p. 130). This however can only be done if the requisite notices have been given, and if they have not been given in time for an annual general meeting a subsequent meeting will have to be requisitioned for the purpose.

(3) Declaring a dividend.—Assuming the report is adopted, one of the directors usually then moves the payment of the dividend recommended therein. Clause 114 of Table A provides: "The company in general

meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors." There is generally a similar provision in other articles of association.

(4) **Election of directors.**—The articles generally contain provisions relating to the retirement and election of directors. Table A provides as follows:

Rotation of Directors.

89. At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

90. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

91. A retiring director shall be eligible for re-election.

92. The company at the meeting at which a director retires in manner aforesaid may fill the vacated office by electing a person thereto, and in default the retiring director shall if offering himself for re-election be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost.

93. No person other than a director retiring at the meeting shall unless recommended by the directors be eligible for election to the office of director at any general meeting unless not less than three nor more than twenty-one days before the date appointed for the meeting there shall have been left at the registered office of the company notice in writing, signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.

94. The Company may from time to time by ordinary resolution increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

In the case of a public company the appointment of each director must, to be valid, be effected by a separate

resolution unless the meeting agrees without a dissentient to a motion for the appointment of two or more directors being made by a single resolution (Section 183).

A resolution moved in contravention of that section is void and the persons thereby intended to be appointed directors will not be so appointed. The section also provides that if an election is thereby avoided and the office of a retiring director is in consequence not filled, no provision for the retiring director's automatic reappointment such as in Clause 92 of Table A (*supra*) is to apply (Subsection (2) (*b*)).

It should be noted that though the election of directors is generally ordinary business of which notice is not required, if the articles contain a provision similar to Clause 93 of Table A and it is desired to move the appointment of a person who is neither a retiring director nor recommended by the directors, notice will have to be given to the company of that intention in accordance with the article.

(5) **Appointment and remuneration of auditors.**— The statutory provisions relating to this matter are contained in Section 159.

Sub-section (1) provides that every company shall at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that, until the conclusion of the next, annual general meeting.

Thus the appointment of the auditor must be made at the annual general meeting. As has already been stated, the accounts are usually laid before the annual general meeting, but may under the provisions of Section 148 be laid before any general meeting held in the appropriate calendar year.

Section 159 (2) provides that at any annual general meeting a retiring auditor, however appointed, shall be reappointed without any resolution being passed unless (*a*) he is not qualified for reappointment; or (*b*) a resolution has been passed at that meeting appointing someone instead of him or providing expressly that he shall not

be reappointed; or (*c*) he has given the company notice in writing of his unwillingness to be reappointed.

The proviso to this sub-section provides that where notice has been given of an intended resolution to appoint some other person in place of the retiring auditor, but the resolution cannot be proceeded with by reason of the death, incapacity, or disqualification of that person, the retiring auditor shall not be automatically reappointed.

Special notice (see *post*, p. 132) must be given of any resolution for the appointment of some person other than the retiring auditor as auditor or of any resolution providing expressly that a retiring auditor shall not be reappointed (Section 160 (1)).

If no auditor is appointed or reappointed the Board of Trade may fill the vacancy (Section 159 (3)). The directors may appoint the first auditors subject to the company's power of removal (Section 159 (5)), and they may also fill casual vacancies (Section 159 (6)).

Section 159 (7) provides that the remuneration of the auditors of a company in the case of an auditor appointed by the directors or by the Board of Trade may be fixed by the directors or by the Board as the case may be, and except in those cases shall be fixed by the company in general meeting or in such manner as the company in general meeting shall determine. For the purposes of Sub-section (7) any sums paid by the company in respect of the auditors' expenses are to be included in the expression remuneration.

Unlike the appointment of auditors the determination of their remuneration need not be made at the annual general meeting, but it will clearly be generally convenient to fix it then.

(6) **Special business,** which is discussed in the next chapter, can be transacted at an annual general meeting, provided due notice thereof has been given. There is no need, as was usual at one time, to transact special business at an extraordinary general meeting.

CHAPTER 16

ORDINARY, EXTRAORDINARY, AND SPECIAL RESOLUTIONS

NORMALLY a company will pass only resolutions of these three kinds. Business declared by the articles not to be special will almost invariably only require to be done by ordinary resolution. Where certain business which is declared, under the articles, to be special business is to be dealt with by an ordinary resolution, the nature of the business to be transacted must be specified in the notice convening the meeting, but it is not necessary, though often desirable, to set out in the notice the exact terms of an ordinary resolution. It will be sufficient to specify the nature of the business proposed to be transacted thereby under all usual forms of articles. The exact words of every special or extraordinary resolution must, however, be set out in the notice convening the meeting for the purpose of considering the resolution (*post*, p. 135).

(1) **Ordinary resolutions,** often referred to as resolutions of the company in general meeting, are those which are passed by a bare majority of those voting at any kind of general meeting.

As has been pointed out (*ante*, p. 79) a company may delegate certain of its powers to its directors in such a way that those powers can no longer be exercised by the company in general meeting. Apart from acts which the company by such delegation has abandoned its powers to perform, a company may carry out by ordinary resolution all such acts as are not required by the Act or by its articles to be effected by special or extraordinary resolution. There are, however, a number of things which a company is expressly empowered by the Act to carry out by a resolu-

tion of the company in general meeting, *i.e.* by an ordinary resolution.

Sub-sections (1) and (2) of Section 61, for instance, provide as follows:

(1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorised by its articles, may alter the conditions of its memorandum as follows; that is to say, it may:

(*a*) increase its share capital by new shares of such amount as it thinks expedient;

(*b*) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(*c*) convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination;

(*d*) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(*e*) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section must be exercised by the company in general meeting.

Other instances of what may be effected by a resolution of the company in general meeting are to be found in the Act.

Certain acts can be effected by ordinary resolution but nevertheless the Act may require that "special notice" of the intention to propose such resolution be given. Thus Sub-sections (1) and (2) of Section 184 provide as follows:*

(1) A company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and him:

Provided that this sub-section shall not, in the case of a private company, authorise the removal of a director holding office for

* This is the only case in the Act where the expression "Ordinary Resolution" is used. Normally the Act states "the company in general meeting may . "

life on the eighteenth day of July, nineteen hundred and forty-five, whether or not subject to retirement under an age limit by virtue of the articles or otherwise.

(2) Special notice shall be required of any resolution to remove a director under this section or to appoint somebody instead of a director so removed at the meeting at which he is removed, and on receipt of notice of an intended resolution to remove a director under this section the company shall forthwith send a copy thereof to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.

The special notice referred to in Sub-section (2) is dealt with below. The rest of the section provides that when a notice is given of an intended resolution to remove a director under the section, the director in question may require his representations as to the intended resolution to be circulated to the members of the company, or, if that cannot or has not been done, to be read out at the meeting at which the resolution is proposed. If, however, the company or any other person who claims to be aggrieved satisfies the Court that the rights conferred by the section are being abused to secure needless publicity for defamatory matter, the representations need not be sent out or read at the meeting (Sub-section (3)).

The vacancy occasioned by a removal of a director under the section if not filled by the meeting at which the removal takes place may be filled as a casual vacancy (Sub-section (4)), *e.g.* in the case of a company to which Table A applies, under Clause 95, which is as follows:

The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these regulations. Any director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for re-election but shall not be taken into account in determining the directors who are to retire by rotation at such meeting.

A director appointed under Section 184 is for the purpose of working out which directors are to retire by rotation

deemed to have been appointed on the day the removed director was last appointed a director (Sub-section (5)).

The section is not to deprive a removed director of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with his appointment as director *e.g.* as managing director, and is not to interfere with any other power that the company may have of removing a director (Sub-section (6)). Consequently, if the articles provide, as they frequently do, that a director may be removed by extraordinary resolution, a director may be so removed and in that case no special notice will be necessary. The power thus conferred by the articles is additional to, and not in substitution for, the power conferred by Section 184.

The special notice required in this case is required in the case of two other kinds of resolution. Under Section 160 it is required for a resolution directed against the re-election of the retiring auditor (see *ante*, p. 128). In the event of such a notice being given, that section gives the retiring auditor a like right of making and having circulated or read out his representations as to the proposed resolution as is given to a director by Section 184, subject to similar provisions regarding defamatory matter.

Under Section 185 special notice is also required for the appointment of a director over the age limit imposed on directors by this section or for the appointment of a director who is not to retire on attaining that age limit. The provision as to age limit may, however, be excluded by the company's articles (Sub-section (7)) and does not normally apply to a private company (Sub-section (8)).

All these resolutions for which special notice is required are ordinary resolutions and only differ from other ordinary resolutions by reason of the necessity for special notice of them being given.

The special notice required in the case of resolutions of these three kinds mentioned above is dealt with by Section 142, which is as follows:

142. Where by any provision hereafter contained in this Act special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than twenty-eight days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the articles, not less than twenty-one days before the meeting:

Provided that if, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date twenty-eight days or less after the notice has been given, the notice though not given within the time required by this sub-section shall be deemed to have been properly given for the purposes thereof.

It will be noted that the requirements as to special notice are twofold. First, notice of the intention to move the resolution must be given to the company not less than twenty-eight days before the meeting at which it is to be moved and consequently even if the board desire to put forward a resolution for which special notice is required, they must arrange for someone to give this notice to the company. It is submitted that this notice must be given by the person who being entitled to do so intends to propose the resolution, but that provided that such notice has been duly given any member may in fact propose the resolution. Secondly, on receipt of this notice the board must give notice of the proposed resolution to the members in the same way as it gives notice of the meeting. Mere receipt by the company of notice of an intention to move a resolution under this section does not compel the company to hold a meeting. If the notice signifies the intention to move the resolution at the next meeting they need not give notice of it until the next annual general meeting is held unless an extraordinary general meeting is either convened in the ordinary way or requisitioned under Section 132 before the date for the annual general meeting. If, therefore, the next meeting is not an annual general meeting it will be sufficient to

give fourteen days' notice of the resolution. If, however, it is impracticable for notice of the intended resolution to be given in the same way as notice of the meeting is given, then in any case twenty-one days' notice thereof must be given either by advertisement in a newspaper or in any other way allowed by the articles.

The proviso to the section is presumably directed to securing that if the directors are faced with an unwelcome special notice shortly before a meeting of the company is about to be held, they shall not be able to defer consideration of the resolution mentioned in the special notice by bringing forward the date of the meeting.

As stated (*ante*, p. 93), the unanimous consent of all the members entitled to vote, even though given separately, may in some cases be equivalent to the passing of an ordinary resolution. But where special notice is required this must, in fact, be given.

(2) **Extraordinary resolutions.**—The Act makes an extraordinary resolution necessary for certain purposes. These, which are all connected with the voluntary winding up of a company, are as follows: resolving that a company shall be wound up on the ground that it cannot by reason of its liabilities continue its business (Section 278); sanctioning the exercise by the liquidator of certain powers in a voluntary winding up (Section 303); for making a scheme of arrangement between the liquidator and the company's creditors binding on the company (Section 306); and for disposing of the books and papers of the company and the liquidator in a members' voluntary winding up (Section 341).

In addition, the articles frequently provide that certain things, *e.g.* the removal of a director without going through the formalities of giving special notice may be effected by extraordinary resolution.

Section 141 (1) provides:

> A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members as, being entitled so to do, vote in person or,

where proxies are allowed, by proxy at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

This Sub-section is dealing only with voting on a show of hands. Unless the articles otherwise provide, which they will very seldom do, on a show of hands only members present are counted, not those present by proxy (Ernest *v.* Loma Gold Mines, 1897, 1 Ch. 1).

Sub-section (4) of this section provides as follows:

(4) In computing the majority on a poll demanded on the question that an extraordinary resolution or a special resolution be passed, reference shall be had to the number of votes cast for and against the resolution.

In Sub-section (1) the words "a majority of" are redundant. If 100 votes are cast, 75 will secure the passing of an extraordinary resolution.

Consequently, for a special or extraordinary resolution to be passed on a show of hands at least 75 per cent. of the members voting must vote in its favour and on a poll 75 per cent. of the total votes validly cast, which will include votes cast by proxies, must be in favour of the resolution.

The notice of the meeting at which it is intended to propose a resolution as an extraordinary resolution, must set out the actual resolution, and also that it is proposed to pass the resolution as an extraordinary resolution (McConnell *v.* Prill & Co., 1916, 2 Ch. 57). In *re* Oxted Motor Company (1921, 3 K. B. 32) it was held that an extraordinary resolution for voluntary winding up might be passed by the unanimous consent of all the members even though no notice had been given. In view, however, of the express requirements of the section it is hardly safe to rely on this result following in the case of any extraordinary resolution.

Under Section 133 (*ante*, p. 94) the length of notice of a meeting for passing an extraordinary resolution by a company other than an unlimited company is fourteen clear days unless a shorter notice is agreed to in the manner specified in Sub-section (3) of that section.

(3) **Special resolutions** are required by the Act for various purposes, the most usual of which are as follows: Altering articles (Section 10), making certain alterations in the objects clause of the memorandum (Section 5), and of certain other matters in the memorandum (Section 23), changing the name of the company (Section 18), and reducing the capital of the company (Section 66). In certain circumstances a special resolution is required to bring about a winding up of the company. In addition the articles may provide that the company shall only be able to do certain things by special resolution.

The notice must set out the resolution stating that it is proposed as a special resolution. The majority required is the same as for an extraordinary resolution.

Section 141 (2) provides:

A resolution shall be a special resolution when it has been passed by a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given:

Provided that, if it is so agreed by a majority in number of the members having the right to attend and vote at any such meeting, being a majority together holding not less than ninety-five per cent. in nominal value of the shares giving that right, or, in the case of a company not having a share capital, together representing not less than ninety-five per cent. of the total voting rights at that meeting of all the members, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

There is no limitation to the shortness of the notice provided the specified number of members attend and agree to the notice in fact given. Some notice is, however, required by the sub-section and the words of the resolution must be set out.

(4) **Matters common to both special and extraordinary resolutions.**—Section 141 Sub-section (3) provides:

At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, a declaration of the chairman that the resolution is carried shall, unless a poll is

demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

The statutory provision as to the effect of the declaration by the chairman where no poll is demanded is extended by Table A and often by other forms of articles.

Sub-section (5) provides:

> For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by this Act or the articles.

The notice of the meeting for the purpose of passing a special or extraordinary resolution under Sub-section (5) must be given in the same way as is required by the articles for notice of other meetings of the company, or if the meeting is directed to be held by the Court in manner directed by the Court.

The demand for a poll on resolutions of this kind is governed by the same provisions as any such demand (see *post*, p. 144).

Neither an extraordinary nor a special resolution will have been validly passed if it is in terms other than those of the resolution specified in the notice of meeting (McConnel *v.* Prill & Co., 1916, 2 Ch. 57).

A printed copy of every special and extraordinary resolution must under Section 143 be forwarded to the registrar of companies save that, in the case of an exempt private company, the copy need not be printed but must be in a form approved by the registrar.

If the Act provides that a particular thing may be effected by the passing of an extraordinary or special resolution the articles cannot require a different kind of resolution for that purpose (Ayre *v.* Skelsey's Adamant Cement Co., 1904, 20 T. L. R. 587). If the Act contains no requirement as to the way in which a company is to do any particular act it is competent for the articles to require for such act a resolution passed by a greater majority than that necessary for a special or extraordinary resolution.

(5) Amendments to proposed ordinary resolutions.

(1) Must be within the scope of the notice convening the meeting. When notice is given of a resolution to appoint three named directors an amendment to appoint two additional directors was valid (Betts *v.* Macnaghten, 1910, 1 Ch. 430). In that case, however, notice was given of the resolution with the addition of the words "with such amendments as shall be determined on at the meeting." Similarly in Choppington Collieries *v.* Johnson (1944, 1 All. E. R. 762) the articles provided that the election of directors in place of those retiring by rotation was not special business. Notice was sent out of an annual general meeting stating that the business was (*inter alia*) to elect directors (in the plural) and also stating that one retiring director offered himself for re-election. It was held that the meeting could appoint persons other than the retiring director to be directors up to the maximum number allowed by the articles. An amendment should not impose a greater burden on the company than the original motion.

(2) Need not be in writing unless articles expressly provide, but they should be sufficiently definite (Henderson *v.* Bank of Australasia, 1890, 45 Ch. D., 330).

(3) Must be put to the meeting but need not necessarily be seconded unless the articles specially require this. "If the chairman put the question without its being either proposed or seconded by anybody, that would be perfectly good" (*re* Horbury Bridge Coal Co., 1879, 11 Ch. D., 109). A chairman is not justified in refusing a motion or amendment because there is no seconder unless the articles or rules expressly provide that all motions or amendments shall be seconded.

> If the mover of the amendment does not challenge the chairman's ruling, that is not a waiver of his right to impeach the resolution. "As the chairman's refusal to put the amendment had withdrawn a material and relevant question from the consideration of the meeting, the resolution must be set aside. . . . When a chairman deliberately rules that a certain amendment cannot be put, it would be improper and indecent for any shareholder to proceed to discuss the propriety of the chairman's ruling; of course, I am assuming that he gives his ruling deliberately, and having the matter sufficiently before him" (Henderson *v.* Bank of Australasia, *supra*).

Where there are more amendments than one they should be put to the meeting in the order in which they affect the main question and then the main question in its original form or as finally amended. Strict adherence to the formality of putting motions and amendments is not essential, provided they are put to the meeting in such a way that those present understand what it is that they are called upon to decide (*ex parte* Stevens, (1852), 16, J. P. 632).

CHAPTER 17

VOTING AT MEETINGS

SECTION 134 (*e*) of the Act provides that in so far as the articles do not make other provision:

> in the case of a company originally having a share capital every member shall have one vote in respect of each share or each ten pounds of stock held by him, and in any other case every member shall have one vote.

The Act contemplates voting by a show of hands in the first instance (Ernest *v.* Loma Gold Mines, 1897, 1 Ch. 1), and consequently this statutory provision could only apply on a poll.

The manner of voting is, however, invariably determined by the articles. Clause 62 of Table A provides:

> Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every member present in person shall have one vote, and on a poll every member shall have one vote for each share of which he is the holder.

On a show of hands one person can only give one vote. Even if the articles provide that a member present by proxy may vote on a show of hands his proxy will only have one vote whether he is a member of the company or not (Ernest *v.* Loma Gold Mines (*supra*)).

Articles frequently provide that certain classes of shares, *e.g.* preference shares, shall confer no vote at general meetings or shall confer a right to vote at such meetings only on certain specified matters or when the preference dividend is in arrear for a certain period. Most forms of articles also contain a restriction on the right to vote similar to that contained in Clause 65 of Table A which is as follows:

> 65. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

In the absence of contract a person in whose name shares are registered (*e.g.* a mortgagee) can vote as he pleases (Siemens Bros. *v.* Burns, 1918, 2 Ch. 324), but where the mortgagee of shares agrees for a valuable consideration to vote at general meetings of the company in accordance with the wishes of the mortgagor, the Court will enforce the agreement by injunction (Puddephatt *v.* Leith, No. 1, 1916, 1 Ch. 200). Similarly an agreement made by a shareholder on a sale of shares held by him that he will vote in a particular way until the transfer is registered is valid and can be enforced (Greenwell *v.* Porter, 1902, 1 Ch. 530), and a member who holds shares as nominee or trustee for another is bound to vote as the beneficial owner directs (Wise *v.* Lansdell, 1921, 1 Ch. 420). The company, however, is not concerned with the beneficial interests and must accept the vote of the registered holder (Siemens Bros. *v.* Burns, 1918, 2 Ch. 324).

The right of an alien enemy of voting either personally or by proxy in respect of shares in an English company is suspended during war (Robson *v.* Premier Oil &c. Co., 1915, 2 Ch. 124).

A shareholder's vote is a right of property which he may use as he pleases, and his motive is immaterial. "There is no obligation on a shareholder of a company to give his vote merely with a view to what other persons may consider the interest of the company at large. He has a right, if he thinks fit, to give his vote from motives or promptings of what he considers his own individual interest" (Pender *v.* Lushington, 1877, 6 Ch. D., at p. 75). This rule is, however, subject to the qualification that a majority of the members will not be allowed by the exercise of their votes to commit a fraud on the minority (Menier *v.* Hooper's Telegraph Co., 1874, L. R., 9 Ch. 350). It is never easy to say for certain what does and what does not come within the expression of fraud on the minority. An example is provided by the use by the majority shareholders of their votes to deprive the company of property belonging to it (Cook *v.* Deeks, 1916, 1 A. C. 554).

A further qualification to the rule that a member may use his votes as he pleases is to be found in the case of meetings of a class of members. "While usually a holder of shares or debentures may vote as his interest directs, he is subject to the further principle that where his vote is conferred on him as a member of a class he must conform to the interest of the class itself when seeking to exercise the power conferred on him in his capacity of being a member" (British America Nickel Corporation *v.* O'Brien, 1927, A. C., at p. 373), and see Goodfellow *v.* Nelson Line (1912, 2 Ch. 324). It is, however, by no means easy to say exactly what the effect of this rule may be in a particular case.

Directors are usually forbidden by the articles to vote as directors on contracts in which they are interested, but even if this is so they may vote as they please at general meetings (East Pant Du United Lead Mining Co. *v.* Merryweather, 1864, 2 H. & M. 254).

The method of voting by a corporation which is a member of a company has been explained *ante*, p. 117.

The remaining clauses of Table A dealing with the right to vote are as follows:

63. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

64. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, receiver, curator bonis, or other person in the nature of a committee, receiver or curator bonis appointed by that court, and any such committee, receiver, curator bonis or other person may, on a poll, vote by proxy.

66. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

Most articles contain provisions similar to these.

(1) SHOW OF HANDS

Unless the articles otherwise provide, voting will, in the first instance, be by show of hands and this stage in the proceedings should not be omitted. See *ante*, p. 115.

Usually every member personally present and entitled to vote has one vote only, independent of the number of shares or proxies he holds. At a meeting of the members of a company, the articles of which allow voting by proxy, the chairman, in ascertaining the number of votes given on a show of hands, must count the vote of each who holds proxies as a single vote, and not count a vote for each of the members whose proxies he holds (Ernest *v.* Loma Gold Mines Co., 1897, 1 Ch. 1). The vote of a non-member, *i.e.* a person not entitled to vote on his own account but who was a proxy for a member, would not, unless the articles so provided, be entitled to a vote on a show of hands. Clause 62 of Table A (*ante*, p. 140) does not so provide. A representative of a corporation, however, under Section 139 (*ante*, p. 117) would be entitled to vote on a show of hands by virtue of Sub-section (2) of that section. It is desirable that if non-members are admitted to the meeting they should be known to the chairman to prevent them taking part in a show of hands. Similarly if members not entitled to vote are entitled to attend, the presence of such members should be brought to the attention of the chairman.

Clause 58 of Table A (*infra*) provides that at any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) validly demanded and most articles contain a similar provision. For the position where the articles make the chairman's declaration as to the result of the show of hands conclusive, see p. 114, *ante*.

Where on a show of hands there are two resolutions before a meeting of shareholders, one for the reduction of capital and another for the conversion of preference shares

into ordinary shares, and where there is a right to a poll, the chairman may put the resolution *en bloc* if no shareholder requires him to put them separately (*re* Jones, Ltd., 1933, 50 T. L. R. 31).

(2) DEMANDING A POLL

The articles may contain provisions governing the way in which a poll must be demanded at any general meeting, but all such provisions will be subject to the provisions of Section 137 which provides as follows:

(1) Any provision contained in a company's articles shall be void in so far as it would have the effect either:

(*a*) of excluding the right to demand a poll at a general meeting on any question other than the election of the chairman of the meeting or the adjournment of the meeting; or

(*b*) of making ineffective a demand for a poll on any such question which is made either:

(i) by not less than five members having the right to vote at the meeting; or

(ii) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or

(iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

(2) The instrument appointing a proxy to vote at a meeting of a company shall be deemed also to confer authority to demand or join in demanding a poll, and for the purposes of the foregoing sub-section a demand by a person as proxy for a member shall be the same as a demand by the member.

Clause 58 of Table A which deals with the demand for a poll goes somewhat further than this, and is as follows:

58. At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded—

(*a*) by the chairman; or

(*b*) by at least three members present in person or by proxy; or

(*c*) by any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or

(*d*) by a member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

Unless a poll be so demanded a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost and an entry to that effect in the book containing the minutes of the proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.

A poll should be demanded immediately after the show of hands has been declared—the latter being thereby nullified—and it is the chairman's duty to grant it, and to fix the time and place for the poll in accordance with the articles.

If the demand is challenged it must, of course, be justified, but it need not be justified if the chairman knows privately that the demand is, in fact, supported by the requisite number (*re* Phœnix Electric Light Co., 1883, 48 L. T. 260). If a poll is not taken after a proper demand therefore, the resolution which has been challenged is void (R. *v.* Cooper, 1870, L. R., 5 Q. B. 457).

If the power to demand a poll is conferred on the chairman by the articles, that power is not a personal right to be exercised according to his fancy but is one to be exercised or not according to his decision whether its exercise is necessary to ascertain the sense of the meeting (Second Consolidated Trust Ltd. *v.* Ceylon, &c., Estates Ltd., 1943, 2 All E. R. 567), *e.g.* if proxies can only vote on a poll and all those present vote in favour of a resolution but the chairman knows that proxy papers have been given for the purpose of voting against the resolution in sufficient numbers to secure its rejection he is bound to demand a poll.

(3) TAKING A POLL

Clauses 59 and 61 of Table A provide as follows:

59. Except as provided in regulation 61, if a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

61. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

It is, under Section 137 (*ante*), competent for articles to provide that no poll may be demanded on the election of a chairman or on a question of adjournment. Most articles leave the time and manner of the taking of the poll to be settled by the chairman.

(1) The chairman may direct a poll to be taken at once unless the articles otherwise provide. If the matter is of considerable importance it will generally be desirable for a future date to be fixed and for all the members to be given notice that the poll will be taken on that date. Unless the articles so require the chairman is not, however, bound to take this course (*re* Chillington Iron Co. (1885), 29 Ch. D. 159). The usual method is to require every member who is entitled to vote to sign a paper (in order to prevent personation) headed "for" or "against" the motion; the number of votes to which each member is under the articles entitled is inserted against the signature of the member, and these, having been added, the chairman declares accordingly. Where the articles provide that a poll shall be taken within seven days of the meeting it cannot be taken at once (*re* British Flax Producers Company, 1889, 60 L. T. 215).

(2) A member may vote personally at a poll, though not present when the poll was demanded (Campbell *v.* Maund, 1836, 5 A. & E. 865).

(3) Resolutions must be put to the poll separately and not *en bloc*, otherwise the poll is invalid. All the resolu-

tions may, however, be included on one sheet of paper, to be separately marked by the voters (Patent Wood Keg Syndicate *v.* Pearse, 1906, W. N. 164).

(4) Scrutineers are often appointed on each side to be present at the counting, but this, though desirable, is not necessary unless the articles expressly provide for such appointment (Wandsworth Gas Light Co. *v.* Wright, 1870, 22 L. T. 404). Where the articles do not provide for the appointment of scrutineers they may be appointed by the chairman.

(5) The chairman should fix the hours during which the poll is to take place; if he does not do so, he cannot close the poll so long as votes are coming in (R. *v.* Vestrymen &c., of St. Pancras, 1839, 11 A. & E. 15); but after waiting a reasonable time, if no more voters present themselves, he may declare the poll closed. The improper exclusion of a voter may invalidate a poll (R. *v.* Rector &c. of St. Mary, Lambeth, 8 A. & E. 356).

(6) The right to vote and the number of shares held are determined by reference to the register of the members. "The register of shareholders, on which there can be no notice of a trust, furnishes the only means of ascertaining whether you have a lawful meeting or a lawful demand for a poll, or of enabling the scrutineers to strike out votes" (Pender *v.* Lushington, 1877, 6 Ch. D. at p. 78). Where there is a limitation of the number of votes which any member may exercise, he may distribute some of his shares among his friends as trustees for him, and thus increase his voting power (*re* Stranton Iron Co., 1873, L. R. 16 Eq. 559).

(7) A poll is regarded as part of the proceedings of the original meeting. "The taking of a poll is a mere enlargement of the meeting at which it was demanded" (R. *v.* Wimbledon Local Board, 1882, 8 Q. B. D., at p. 464; see also Shaw *v.* Tati Concessions, *post*, p. 154).

(8) Under Table A, or under the common form of articles, a poll cannot be taken by sending voting papers to the members, to be lodged with the company. They or their proxies must attend and give the votes personally (McMillan *v.* Le Roi Mining Co., 1906, 1 Ch. 331).

(9) Section 138 provides:

> On a poll taken at a meeting of a company or a meeting of any class of members of a company, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

The object of this provision is to enable a person who holds some shares as trustee for one person and some as trustee for another to cast the votes belonging to those shares as the persons beneficially entitled individually direct, even if they require the votes to be used in different ways. Prior to the passing of the Act it was thought that some difficulty might arise in such circumstances.

(4) PROXIES

A proxy is a person appointed in the place of another to represent him, and the word is also used for the instrument by which a person is so appointed. A right to appoint a proxy is now conferred by Section 136(1). Under that sub-section a member entitled to attend and vote at a meeting is entitled to appoint another person, who need not himself be a member of the company, as his proxy to attend and vote instead of himself. The sub-section does not apply to a company not having a share capital, and in that case the right, if any, to appoint a proxy must still be conferred by the articles. Unless otherwise provided by the articles a proxy may vote only on a poll. Table A does not otherwise provide, and consequently under Part II the position arises that a proxy may count towards a quorum under Clause 4 (*ante*, p. 116), but may not vote unless a poll is demanded. A proxy has under Section 137 (2) (*ante*, p. 144) the same right to demand or join in demanding a poll as the person who appointed him would have had.

Further under Section 136 (1) a proxy at a meeting of a private company has the same right to speak at the meeting as his appointer would have had. The sub-section also provides that a member of a private company is not entitled, unless the articles so provide, to appoint more than one proxy to attend on the same occasion.

In Peel *v.* London and North Western Railway Co. (1907, 1 Ch. 5) it was held that it was the duty of the directors to inform the shareholders of the facts of their policy, and the reason why they considered that this policy should be maintained and supported by the shareholders, and that they were justified in trying to influence and secure votes for this purpose, and accordingly that expenses which had thus been *bonâ fide* incurred in the interest of the company were properly payable out of the funds of the company, *e.g.* issuing of stamped proxy papers, containing the names of three directors as proposed proxies, with a stamped cover for return. This is an important decision in relation to 'take-over' bids and in cases where a group of shareholders is attacking the directors, for it enables directors to use the company's funds to defend their policy. Such proxy papers if sent must now, however, be sent to all the members entitled to notice of the meeting, for Sub-section (4) of Section 136 provides:

If for the purpose of any meeting of a company invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy, every officer of the company who knowingly and wilfully authorises or permits their issue as aforesaid shall be liable to a fine not exceeding one hundred pounds:

Provided that an officer shall not be liable under this subsection by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy or of a list of persons willing to act as proxy if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

Two forms of proxy are given in Table A as follows:

70. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit:

"
Limited

I/We , of , in the county of , being a member/members of the above-named company, hereby appoint of , or, failing him, of , as my/our proxy to vote for me/us on my/our behalf at the [annual or extraordinary, as the case may be] general

meeting of the company to be held on the day of 19 , and at any adjournment thereof.

Signed this day of 19 ."

71. Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit:

" Limited

I/We, , of

in the county of , being a member/members of the above-named company, hereby appoint

of , or, failing him,

of , as my/our proxy to vote for me/us on my/our behalf at the [annual or extraordinary, as the case may be] general meeting of the company, to be held on the day of 19 , and at any adjournment thereof.

Signed this day of 19 ."

This form is to be used $\frac{\text{*in favour}}{\text{against}}$ of the resolution. Unless otherwise instructed, the proxy will vote as he thinks fit.

*Strike out whichever is not desired."

In other forms of articles one form only is usually given which may provide for voting for or against any particular resolution. Where articles prescribe that proxies must be in a specified form or as near thereto as circumstances permit, and the specified form is a proxy applicable to a single meeting, general proxies, properly stamped, should not be excluded (Isaacs *v.* Chapman, 1915, 32 T. L. R. 183). If required by the articles, they must be deposited with the company for a certain number of hours prior to the meeting, but under Section 136 (3) this number of hours may not be more than forty-eight.

A proxy is "a person who was properly appointed to act for another," so that where articles provided that votes might be given by proxy but were silent as to the manner in which the proxy was to record such votes, it was held that the voting papers merely signed "George Foerster, for self and proxies" were in order (Foerster *v.* Newlands Mines, 1902, 46 S. J. 409).

If required to be sent by post, the proxy form should be addressed to the proper officers. In Burnett *v.* Gill, *The*

Times, 13th June, 1906, p. 4, the articles provided that no person should be entitled to vote as a proxy unless the instrument appointing him should be deposited at the office of the company forty-eight hours before the meeting. The company's registered office was the office of the secretary, a chartered accountant. It was held that a proxy addressed to "the chairman of the meeting," care of the secretary whose name only was mentioned, was not duly deposited at the office.

If the articles require attestation for a proxy, it must not be omitted. "The right of a shareholder to vote by proxy depends on the contract between himself and his co-shareholders, and where parties have a right depending upon the contract between them and the other parties, there, in my opinion, all the requisitions of the contract as to the exercise of that right must be followed. In my opinion, therefore, the proxy papers which were not attested as required by the articles were improperly admitted by the chairman" (Harben *v.* Phillips, 1883, 23 Ch. D., at p. 32). Presumably even though the right is now conferred by the Act the articles may still validly require attestation. The person appointed a proxy cannot act as an attesting witness (*re* Parrott, 1891, 2 Q. B. 151).

Clause 73 of Table A provides as follows:

> 73. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the share in respect of which the proxy if given, provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

In Cousins *v.* International Brick Co. (1931, 2 Ch. 90) the articles contained a similar provision, but it was held that a shareholder who had given a proxy and had not revoked it could attend the meeting personally and vote, in which case his proxy could not vote for him.

The remaining clauses of Table A dealing with proxies are as follows:

66. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

67. On a poll votes may be given either personally or by proxy.

68. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing, or, if the appointer is a corporation, either under seal, or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the company.

69. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company or at such other place within the United Kingdom as is specified for that purpose in the notice convening the meeting, not less than forty-eight hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty-four hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

72. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

By Sub-section (5) of Section 136 it is provided that the provisions of that section, all of which have been mentioned (*ante*, p. 148), shall apply in the case of class meetings as well as in the case of general meetings.

Formerly a proxy paper for one specified meeting required a penny stamp (Stamp Act. 1891, First Schedule "Letter or Power of Attorney, etc." Sub-heading (1)). Such a proxy had to specify the date of the meeting and was available only at that meeting and at any adjournment of that meeting (*ibid.*, Section 80 (1)).

Notwithstanding this provision it appears that if the proxy was stamped on execution the date of the meeting or the name of the proxy might be filled in subsequently by a person having implied authority to do so (Sadgrove *v.*

Bryden, 1907, 1 Ch. 318; Ernest *v.* Loma Gold Mines, 1897, 1 Ch. 1; *re* Lancaster (1877), 5 Ch. D. 911).

An express authority to do so would probably require a ten-shilling stamp under Sub-heading (6) of this heading. Now, however, any instrument which formerly required only a penny stamp under this provision is not required to be stamped. Finance Act, 1949, Section 31 (1) and Schedule VIII, Part I, 18.

A proxy to vote "at the next election" was not sufficiently stamped with a penny stamp (R. *v.* McInerney, 1891, 30 L. R. Ir 49), nor was one to vote at "a meeting to be held in London" (*re* English, Scottish and Australian Bank, 1893, 3 Ch. 385).

A proxy other than one which formerly required a penny stamp under Sub-heading (1) of the heading will still require a ten-shilling stamp under Sub-heading (6) of the same heading.

A proxy other than a general proxy may be a delegation of authority for a particular purpose then in contemplation of the person giving it. Proxies were given in November and December, 1886, by the governors of an infirmary for a contemplated election between E and C for the post of surgeon. The particular election did not take place, owing to the retirement of C. It was held that the proxies so given were properly rejected at a subsequent election in April, 1887, between E and J (Howard *v.* Hill, 1889, 59 L. T. 818).

Deposit in due time of a later proxy revokes one of earlier date. Death of the appointor also revokes a proxy, but subject to any special provisions in the articles, *e.g.* Clause 73 of Table A (*ante*, p. 151).

If not limited by the instructions of his appointor a proxy may vote in any way in which his appointor, if present, might have voted. A proxy was appointed to act for a shareholder at a meeting to be held for the purpose of considering and, if thought fit, approving, with or without modification, a proposed scheme of arrangement. It was held that the power of voting

conferred on the holder of the proxy was not confined to that of voting for or against the scheme, but was wide enough to enable him to use the proxy for the purpose of voting on a resolution to defer the consideration of the scheme to a future occasion (*re* Waxed Papers, Ltd., 1937, 53 T. L. R. 676). Presumably the same result would follow in the case of a proxy to vote at a meeting to consider any kind of resolution.

An adjourned meeting, as regards notice, is regarded in law as a continuance of the original meeting (Scadding *v.* Lorant (1851), 3 H. L. C. 418). Consequently, where the articles require proxies to be lodged before the meeting this means the original meeting (McLaren *v.* Thomson, 1917, 2 Ch. 261).

It is not uncommon for articles to provide, as does Clause 69 of Table A (*ante*, p. 152), that they must be lodged before the meeting or adjourned meeting at which they are to be used. In Shaw *v.* Tati Concessions (1913, 1 Ch. 292), when the company had an article in this form, a poll demanded at a meeting was directed to be taken at a future date but the meeting itself was not adjourned. It was held that the mere postponement of the poll was not an adjournment *ad hoc* of the meeting within the meaning of an article allowing the lodgment of proxies forty-eight hours before a meeting or adjourned meeting, but the original meeting continued for the purpose of the poll, and no fresh proxies could be lodged.

In Spiller *v.* Mayo, 1926, W. N. 78, the articles provided that a vote given by proxy should be valid notwithstanding revocation by the person giving the proxy unless notice of the revocation was received at the office of the company before the meeting. A proxy was duly lodged before a meeting at which a poll was demanded, and directed to be taken at a subsequent date. After the meeting but before the poll was taken, the person giving the proxy purported to communicate its revocation to the company. This not being before the meeting was inoperative and the votes cast under the proxy were held valid.

CHAPTER 18

ADJOURNMENTS OF GENERAL MEETINGS

WHERE no provision is made by the articles as to the adjournment of a meeting the power of adjourning is apparently vested in the meeting (*cf.* R. *v.* Grimshaw (1847), 11 Jur. 965). The adjournment must be to some fixed day. Motions for adjournment can generally be brought forward at any period of the meeting, and take precedence of any matter then under consideration. The question of adjournments is generally provided for by the articles, in which case the provisions of the articles must be followed.

Clause 57 of Table A provides as follows:

> The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

This gives the power on the question of adjournment absolutely to the meeting. Sometimes, however, the articles only provide that the chairman may adjourn with the consent of the meeting. In that case he cannot adjourn without such consent but cannot be compelled to adjourn the meeting against his wishes (Salisbury Gold Mining Co. *v.* Hathorn, 1897, A. C. 268). He is not, in any case, entitled to adjourn a meeting capriciously before the business of the meeting has been transacted, and if he purports to do so without good reason, the meeting may appoint another chairman and proceed with the business

(National Dwellings Society *v.* Sykes, 1894, 3 Ch. 159).

As regards the statutory meeting, the power of adjournment is in the hands of the *meeting* (*ante*, p. 84).

Business at adjourned meetings.—Section 144 provides:

> Where a resolution is passed at an adjourned meeting of:
> (*a*) a company;
> (*b*) the holders of any class of shares in a company;
> (*c*) the directors of a company;
> the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Usually only such business can be transacted at the adjourned meeting as has been left unfinished at the original meeting, and proxies are, in the absence of express provision, invalid for the adjourned meeting unless valid for the original meeting (McLaren *v.* Thomson, 1917, 2 Ch. 216). In Catesby *v.* Burnett, 1916, 2 Ch. 325, the articles provided that a member should not be qualified to be elected a director unless fourteen clear days' notice of the intention in that behalf were given to the company before the day of election. At the date of ordinary general meeting there were two directors due for retirement, but the meeting was adjourned without any election of directors. Notice had been given fourteen clear days before the adjourned meeting, and the two new directors elected thereat were held to be validly appointed, since the date of adjourned meeting was the day of election. If the articles had provided for fourteen days' notice before the meeting at which they were elected this would not have been so.

An adjourned meeting is merely the continuance of the original meeting (Scadding *v.* Lorant, 1851, 3 H. L. C. 418), and a fresh notice is not therefore necessary (Wills *v.* Murray, 1850, 4 Ex. 843), unless the articles require such a notice to be given. Most articles do so provide where the adjournment is of some length, *cf.* Clause 57 of Table A (*ante*).

The directors of a company, in the absence of express

authority in the articles of association, have no power to postpone a general meeting of the company properly convened (Smith *v.* Paringa Mines, 1906, 2 Ch. 193). If they endeavour to exercise such a power the shareholders can, if they think fit, meet at the original appointed place, time and day, and transact all the business which was properly before the meeting as first convened. If the directors wish to postpone a meeting, the only way is to meet formally and get the meeting to adjourn itself to a more suitable and convenient time.

A meeting may in certain circumstances be continued on a later date without any adjournment in the strict sense having taken place (Jackson *v.* Hamlyn, 1953, 1 Ch. 577).

CHAPTER 19

MEETINGS OF DIRECTORS

SECTION 176 provides:

Every company registered on or after the first day of November, nineteen hundred and twenty-nine (other than a private company), shall have at least two directors, and every company registered before that date (other than a private company), and every private company, shall have a director.

Unless the articles provide to the contrary, directors act at board meetings, procedure at which is less formal than that of general meetings.

Almost invariably the articles contain some provisions relating to board meetings. Clause 98 of Table A provides:

The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from the United Kingdom.

Most articles allow decisions to be come to by a majority of the directors present, though unanimity may be required by certain forms of special articles.

Directors hold their powers in a fiduciary capacity and must exercise them *bona fide* for the benefit of the company, not for their own ends (Piercy *v.* S. Mills & Co., 1920, 1 Ch. 77).

(1) BOARD MEETINGS

To constitute a valid board meeting the following conditions must be complied with:

(1) **The proper person must be in the chair.**—His

appointment is generally governed by the articles. Clause 101 of Table A, for example, provides:

> The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

An appointment of a chairman of directors made in contravention of the articles is void and is not regularised by mere acquiescence, and consequently resolutions carried by the casting vote of such a chairman are inoperative (Clark *v.* Workman, 1920, 1 I. R. 107).

(2) **The board must be properly constituted.**— Acts done as directors by persons who have not been validly elected do not bind the company (Garden Gully United Quartz Mining Co. *v.* McLister, 1875, 1 A. C. 39); it is otherwise if the fact that they were not properly elected is only discovered afterwards, for Section 180 provides that the acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification. This section is merely intended to cure slips in the appointment of directors and cannot in any case be relied on by a person who in fact knew of the invalidity even if its discovery was not general (Morris *v.* Kanssen, 1946, A. C. 459).

Outsiders are, in the absence of knowledge to the contrary, entitled to assume that the domestic affairs of a company are properly conducted (Royal British Bank *v.* Turquand, 1856, 6 E. & B. 327, but see Houghton *v.* Nothard, Lowe & Wills, 1928, A. C. 1).

Consequently directors acting irregularly will bind the company as against outsiders unless for any reason the outsiders should have been put upon inquiry.

Where the quorum of a board was three, and at a meeting of two the secretary was instructed to affix the seal to a mortgage, it was held that as between the company and

the mortgagees who had no notice of the irregularity the execution of the deed was valid (County of Gloucester Bank *v.* Rudry Merthyr &c. Co., 1895, 1 Ch. 629).

Sometimes articles provide for alternate or substitute directors to act for directors going abroad. In such cases an alternate director may be counted as a director.

(3) **Directors must act at a meeting** unless the articles otherwise provide, for directors cannot think without meeting (*re* Portuguese Consolidated Copper Mines, 1889, 42 Ch. 160). "It was laid down by the Court of Exchequer in D'Arcy *v.* Tamar, Kit Hill, and Callington Railway Company (1867, L. R., 2 Ex. 158) that directors must act together as a board, and that it is not sufficient to procure the separate authority of a sufficient number of directors to constitute a quorum" (*re* Haycraft Gold Reduction and Mining Company, 1900, 2 Ch., at p. 235).

Where the articles provided that no person not recommended by the board of directors for election as a director should be eligible unless at the time he had held twenty shares for two months, and B, who was not a shareholder, was elected unanimously at a *general* meeting—six out of seven directors, who were then the only shareholders, being present—it was held that B's election was void. "Six directors out of seven met in a different capacity and for a different purpose, and such a meeting does not make them a board of directors" (*re* East Norfolk Tramways Co., Barber's Case, 1877, 5 Ch. D., p. 967).

A board meeting can be held under informal circumstances, but the casual meeting of the only two directors at a railway station cannot be treated as a board meeting at the option of one against the will of the other (Barron *v.* Potter, 1914, 1 Ch. 895). The dividing line is, however, narrow. Where one of the only two directors did not attend a meeting, proper notice of which had been given, but was met by the other shortly after in the passage, that other proposed a resolution and, on the first director objecting, declared it passed by virtue of his casting vote,

and this resolution was held to have been duly passed (Smith *v.* Paringa Mines, 1906, 2 Ch. 193).

Articles, however, frequently allow the directors, if unanimous, to act without holding a meeting. Clause 106 of Table A provides:

> A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

A director need not attend every meeting, though he should attend as often as circumstances permit. He is bound to use fair and reasonable diligence in the management of his company's affairs and to act honestly (*re* Forest of Dean Coal Mining Co., 1878, 10 Ch. D. 450).

A director is not liable for misfeasance committed by co-directors without his knowledge at a board meeting at which he is not present (Perry's Case, 1876, 34 L. T. 716).

A subsequent meeting can ratify the business done at an informal meeting (*re* Portuguese Consolidated Copper Mines, 1889, 42 Ch. D. 160), and can ratify an unauthorised act of an agent of the company (Molineaux *v.* London, Birmingham, &c. Co., 1902, 2 K. B. 589).

(2) NOTICE OF MEETINGS

Directors of a company can at any meeting of the board deal with all the affairs of the company then requiring attention so far as the powers conferred on them by the articles extend, and previous notice of special business is not necessary (La Compagnie de Mayville *v.* Whitley, 1896, 1 Ch. 788) unless the articles so require.

Reasonable notice must be given of the meeting, but it need not be in writing unless the articles so provide (Browne *v.* La Trinidad, 1887, 37 Ch. D. 1). Even in the absence of such a provision as is contained in Clause 98 of Table A (*ante*, p. 158), presumably any director may summon a meeting. What is a reasonable notice will depend on the facts in any particular case. In *re* Homer

Gold Mines (1888, 39 Ch. D. 546) a shorter notice than any previously given was held invalid, since the Court came to the conclusion that the notice had been so given with a view to excluding certain directors. A notice may, however, be extremely short if all the directors are able to attend and if any director wishes to object to the shortness of the notice he should make that objection at once (Browne *v.* La Trinidad, *supra*). If a proper notice be not given, the proceedings are invalid unless all the directors are present (Harben *v.* Phillips, 1883, 23 Ch. D. 14). There is, however, no need to send notice when the directors have decided to hold meetings at regular intervals, *i.e.* when there is a fixed day and time: *e.g.* weekly meetings on Fridays, at 3 p.m. Even in the absence of a provision as to directors out of the United Kingdom in Clause 98 of Table A in certain circumstances notice need not be given to a director who is abroad and out of reach (*re* Halifax Sugar Co., 1890, 62 L. T. 564). A director cannot, however, waive his right to notice and even if he says, "I shall not be able to come; you need not summon me," he must be given notice (*re* Portuguese Consolidated Copper Mines, 1889, 42 Ch. D. 160).

Directors are entitled to take the business at a board meeting in any order they may think proper (*re* Cawley & Co., 1889, 42 Ch. D. 209).

(3) QUORUM

Business can only be validly transacted by the majority of the directors at a meeting properly convened (Moore *v.* Hammond, 1827, 6 B. & C. 456) and held, and at which there is the quorum as prescribed by the articles.

Clause 99 of Table A provides:

> The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

If no provision is made by the articles a majority of the directors will constitute a quorum (York Tramways Co. *v.* Willows, 8 Q. B. D. 685), but under certain circum-

stances apparently the necessary number may be determined by the practice of the board (Regent's Canal Ironworks, 1867, W. N. 79).

A quorum of directors means a quorum competent to transact and vote on the business before the board; and therefore, in a case where the articles prohibited interested directors from voting, a resolution passed at a meeting of three directors, two of whom were interested in the subject-matter of the resolution, was held invalid (Yuill *v.* Greymouth Point Elizabeth R. Co. 1904, 1 Ch. 32). In that case articles provided that directors could contract with the company, but should not vote in connection with such contracts, and that until otherwise determined three should be a quorum. Four directors were present at a meeting. At that meeting a resolution was passed for the issue of a debenture to one of the directors present who did not vote on that resolution and a similar resolution was passed to issue another debenture to another director who was present, but did not vote on this latter resolution. It was held in the circumstances of the case that the issue of both debentures was part of one entire transaction in which the directors to whom the debentures were issued were jointly interested and that there was therefore no quorum and the debentures were not validly issued. It was subsequently resolved that in future a quorum should be two so as to enable the difficulty to be got over. One of the directors interested in the transaction was one of the three directors present when that resolution was passed and being interested was unable to count towards a quorum. The purported reduction of the quorum was consequently ineffective (*re* North Eastern Insurance Co., 1919, 1 Ch. 198).

One director may be a quorum if the articles so provide (*re* Fireproof Doors, 1916, 2 Ch. 142).

In *re* Copal Varnish Co. (1917, 2 Ch. 349), where a director of a board of two refused to attend meetings summoned to consider transfers of shares in order to prevent a quorum being formed, it was held that the transferees

were entitled to an order directing the company to register the transfers, since a shareholder has a property in his shares which he has the right to dispose of subject only to any express restriction in the articles. Even if the articles give directors a power to decline to register a transfer, such a power is not exercised where the directors have not passed a resolution declining so to register (*re* Hackney Pavilion, 1924, 1 Ch. 276).

Failure to keep quorum.—Where there is a quorum at the beginning of a meeting, but some of the directors leave the meeting, so that a number less than the quorum remain, any subsequent acts are invalid. This would not be the case if the articles provided that "the quorum shall be [say] two directors present when the meeting proceeds to business," as was found in relation to general meetings in *re* Hartley Baird, 1955, Ch. 143, but such a provision would be most unusual. The normal provision is similar to that found as Clause 99 of Table A, which provides:

> The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

A quorum of directors must be directors competent to vote, so that where directors are under the articles prohibited from voting on matters in which they are interested, a quorum may be impossible. In such a case the quorum cannot be reduced by the directors for the purpose of evading this (*re* North Eastern Insurance Co., 1919, 1 Ch. 198, at p. 207) nor can resolutions of a like nature affecting one director, as for instance granting service contracts to them separately, be dealt with separately, the director concerned being excluded from voting upon his own (*ibid.*)

Minimum number.—Articles usually fix what is to be the maximum and minimum number of the directors. Where a minimum is fixed, and the number of the directors has never reached the minimum, they cannot act even though they are sufficient to form a quorum (Sly, Spink & Co., 1911, 2 Ch. 430). But if there have been sufficient

directors to satisfy the requirement of the minimum number, and their number falls below the minimum but there are nevertheless sufficient directors to form a quorum, such directors may validly act provided that the articles allow continuing directors to act in such a case. (In *re* British Empire Match Co., 59 L. T. 291). Such an article is found in Clause 100 of Table A which provides:

> The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

Under such an article a single director may be entitled to act as the board (Dover &c. Light Railway Co., 1914, 1 Ch. 568, 2 Ch. 506).

(4) DIRECTORS' VOTES

Unless the articles otherwise provide, each director has only one vote at a board meeting, and in the event of a disagreement the majority view will prevail, though the chairman is usually given a casting vote, *cf.* Clause 98 of Table A (*ante*, p. 158).

Votes of directors in matters in which they are interested.—Directors stand in a fiduciary relation to the members of the company, and under the general rules relating to such a relationship a director cannot, in the absence of express provision in the articles, contract with the company without the sanction of the company in general meeting. A director is precluded from dealing on behalf of the company with himself and from entering into any engagements in which he has a personal interest conflicting or which may possibly conflict with the interests of those whose interests it is his duty to protect. This rule extends not only to contracts with the director himself but to contracts with any firms or companies in which that director has an interest either as director or shareholder and even if he holds the shares in the other company

as a trustee. The smallest conceivable conflict of interest will be sufficient to bring this rule into operation (Transvaal Lands Co. *v.* New Belgium Land Co., 1914, 2 Ch. 488). Even the allotment of shares or the issue of debentures by directors to themselves will apparently fall within this rule (Cox *v.* Dublin City Distillery, No. 2, 1915, 1 I. R. 345; Neale *v.* Quin, 1916, W. N. 223). Most articles permit such contracts to a certain extent but frequently provide that in the case of any such contract the interested director is not to vote. In that case we have seen that a director prohibited from voting does not count towards a quorum. Such a prohibition will not, however, prevent a director from voting as a shareholder at general meetings of the company upon contracts in which he is interested (North-West Transportation Co. *v.* Beatty, 1887, 12 App. Cas. 589), and a director is entitled to attend board meetings even when he is not entitled to vote thereat (Grimwade *v.* B.P.S. Syndicate, 1915, 31 T. L. R. 531). It is, however, perfectly competent for the articles not only to permit such contracts but to allow the interested directors to vote on matters connected therewith.

When any such contracts are permitted the provisions of Section 199 must be observed. That section is as follows:

199.—(1) Subject to the provisions of this section, it shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company.

(2) In the case of a proposed contract the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested, and in a case where the director becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the directors held after the director becomes so interested.

(3) For the purpose of this section, a general notice given to the directors of a company by a director to the effect that he is a

member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm, shall be deemed to be a sufficient declaration of interest in relation to any contract so made:

Provided that no such notice shall be of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.

(4) Any director who fails to comply with the provisions of this section shall be liable to a fine not exceeding one hundred pounds.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

It is to be observed that this section does not permit any transaction that is otherwise unlawful, *i.e.* not permitted by the articles.

Clause 84 of Table A provides:

(1) A director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company shall declare the nature of his interest at a meeting of the directors in accordance with section 199 of the Act.

(2) A director shall not vote in respect of any contract or arrangement in which he is interested, and if he shall do so his vote shall not be counted, nor shall he be counted in the quorum present at the meeting, but neither of these prohibitions shall apply to:

(*a*) any arrangement for giving any director any security or indemnity in respect of money lent by him to or obligations undertaken by him for the benefit of the company; or

(*b*) any arrangement for the giving by the company of any security to a third party in respect of a debt or obligation of the company for which the director himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or

(*c*) any contract by a director to subscribe for or underwrite shares or debentures of the company; or

(*d*) any contract or arrangement with any other company in which he is interested only as an officer of the company or as holder of shares or other securities;

and these prohibitions may at any time be suspended or relaxed to any extent, and either generally or in respect of any particular contract, arrangement or transaction, by the company in general meeting.

(3) A director may hold any other office or place of profit under the company (other than the office of auditor) in conjunction with his office of director for such period and on such terms (as to remuneration and otherwise) as the directors may determine and no director or intending director shall be disqualified by his office from contracting with the company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract, or any contract or arrangement entered into by or on behalf of the company in which any director is in any way interested, be liable to be avoided, nor shall any director so contracting or being so interested be liable to account to the company for any profit realised by any such contract or arrangement by reason of such director holding that office or of the fiduciary relation thereby established.

(4) A director, notwithstanding his interest, may be counted in the quorum present at any meeting whereat he or any other director is appointed to hold any such office or place of profit under the company or whereat the terms of any such appointment are arranged, and he may vote on any such appointment or arrangement other than his own appointment or the arrangement of the terms thereof.

(5) Any director may act by himself or his firm in a professional capacity for the company, and he or his firm shall be entitled to remuneration for professional services as if he were not a director; provided that nothing herein contained shall authorise a director or his firm to act as auditor to the company.

Thus in certain circumstances under an article of this nature a director may vote though interested, and in other circumstances he may not. Most articles do not contain such an elaborate provision, but it is often useful to permit the restrictions imposed by the articles to be relaxed by the company in general meetings as in Subsection (2), especially where there are only two or three directors of the company.

It will be observed that Section 199 refers only to contracts "with the company." It would seem that the section would not prohibit a director from voting, for instance, on a board resolution for voting the shares of a subsidiary company in connection with a contract with the director: and the same may be true on a resolution to pass a transfer where the director is a transferor or transferee, unless

this also amounts to a contract between the company and the director. Article 84 (2) of Table A does not however confine itself to contracts with the company, and where an article in this form is found the requirements imposed by Section 199 will be extended.

(5) COMMITTEES

The directors may, if the articles contain the necessary authority, delegate their powers to committees. The articles generally provide for this. Table A provides as follows:

102. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

103. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

104. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.

When a board of directors delegate their powers to a committee without any provision as to the committee acting by a quorum, all acts of the committee must be done in the presence of all the members of the committee, and *semble* the committee have no power to add to their number or supply a vacancy (*re* Liverpool Household Stores, 1890, 59 L. J. Ch. 616). An authority delegated in this manner is a "joint authority" (per Patteson, J., in Brown *v.* Andrew, 18 L. J. Q. B. 153, 155).

In all cases of delegation of powers to a committee its powers and authority should be clearly stated by the resolution effecting the delegation. Where a company is regulated by an article in form of Clause 102 of Table A, directors may delegate their powers to a committee of one (*re* Fireproof Doors, 1916, 2 Ch. 142).

CHAPTER 20

MINUTES

SECTION 145 (1) provides:

Every company shall cause minutes of all proceedings of general meetings, all proceedings at meetings of its directors and, where there are managers, all proceedings at meetings of its managers to be entered in books kept for that purpose.

The Act requires that minutes of meetings of a company must be open to the inspection of members, but does not so require in the case of minutes of meetings of directors.

Section 146 of the Act provides:

(1) The books containing the minutes of proceedings of any general meeting of a company held on or after the first day of November nineteen hundred and twenty-nine shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that no less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge.

(2) Any member shall be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any such minutes as aforesaid at a charge not exceeding sixpence for every hundred words.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding two pounds and further to a default fine of two pounds.

(4) In the case of any such refusal or default, the court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them.

In the absence of an express provision therefor in the articles, which would be unusual, no member is entitled to see the minutes of directors' meetings. "It is highly

proper that an inspection of the books containing the proceedings of the directors should be obtained on special occasions and for special purposes: but the business of such companies could hardly be conducted if anyone, by buying a share, might entitle himself at all times to gain a knowledge of every commercial transaction on which the directors engage, the moment that an entry of it is made in their books . . . the proposed daily and hourly inspection and publication of all their proceedings . . . would probably ere long be found very prejudicial to shareholders" (R. *v.* Mariquita Mining Co., 1859, 1 E. & E. 289). But they should be accessible to directors and the secretary; auditors also are entitled under Section 162 to see them for the purposes of audit.

As the minutes of general meetings are required to be open for inspection of the members and those directors' meetings are not, separate books for each class of minutes are generally kept.

Section 436 provides:

(1) Any register, index, minute book or book of account required by this Act to be kept by a company may be kept either by making entries in bound books or by recording the matters in question in any other manner.

(2) Where any such register, index, minute book or book of account is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery, and where default is made in complying with this sub-section, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds and further shall be liable to a default fine.

Consequently with proper precautions minutes may now be kept in loose-leaf books, which was not formerly the case.

Sub-sections (2) and (3) of s. 145 are as follows:

(2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Where minutes have been made in accordance with the provisions of this section of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers or liquidators shall be deemed to be valid.

It is essential, therefore, that the minutes should contain an accurate record of all proceedings transacted and appointments made.

"Directors ought to place on record, either in formal minutes or otherwise, the purport and effect of their deliberations and conclusions; and if they do this insufficiently or inaccurately they cannot reasonably complain of inferences different from those which they allege to be right" (*re* Liverpool Household Stores, 1890, 59 L. J. Ch., at p. 619).

A clear distinction should be carefully drawn between a report and a minute. The former chiefly consists of what was said, the latter consists of what was done or agreed upon, and its place of record is the minutes. Speeches and arguments at a general meeting may form the material of a newspaper report, but the resolutions and decisions are the only proper material for the minutes. The minutes will only be evidence of those matters properly entered in them.

Though not required by the Act, minutes are sometimes read, or if previously circulated to the members, taken as read, at the next following meeting, and submitted for verification of their correctness. If regarded as a correct report of the proceedings by those members present at that meeting, they are signed by the chairman. If considered incorrect, they may be modified. It is sometimes stated that the minutes were confirmed. This is undesirable as it may suggest that the proceedings recorded in the minutes were approved, which is not the case.

The chairman of the meeting, or more usually of the succeeding meeting, whether present or not at the previous meeting, may, under Section 145 sign the minutes.

They need not, unless required by the articles, be signed at, or with the approval of, a meeting and may be signed even after a winding up order has been made.

Articles provided that a minute signed by any person purporting to be chairman of any meeting of directors was to be receivable in evidence without further proof. An entry was made in a minute book stating the names of parties and number of shares subscribed for, the name of the chairman who signed the minute being set down for one hundred shares. The minute was signed, not at the next meeting, but after the proceedings to wind up the company. It was held that the minute was *prima facie* evidence against all who were present at the meeting, and in the absence of counter evidence showing the incorrectness of the minute, the chairman was liable as a contributory for one hundred shares (*ex parte* Stock, 1864, 33 L. J. Ch. 731).

The signature of the chairman to minutes which embody the terms of a contract may be sufficient to satisfy the Statute of Frauds (Jones *v.* Victoria Graving Dock, 1877, 2 Q. B. D. 314).

It is generally desirable that the minutes of directors' meetings should not be signed until approved by a subsequent meeting. If a succeeding meeting of any kind requires the minutes of a previous meeting to be altered before approving them as correct, some reference to this should be made in the minutes of the later meeting.

Minutes once made and signed should never be altered or corrected. "I trust I shall never again see or hear of the secretary of a company, whether under superior directions or otherwise, altering minutes of meetings, either by striking out anything or adding anything" (*re* Cawley & Co., 1889, 42 Ch. D., 209).

It is most improper to remove a page from the minute book, the pages of which should be numbered consecutively. Frequent alterations or mutilation of the minutes, even when made before the chairman has signed, necessarily give rise to suspicions of bad faith.

The Act merely makes the minutes when signed *prima facie* evidence, *i.e.* the burden of showing that they are wrong is on those who say so. "The minutes in the books are to be received, not as conclusive but as *prima facie* evidence of resolutions and proceedings at general meetings; and also it may be added, and I think correctly, that inasmuch as the chairman who presides at such meetings, and has to receive the poll and declare its result, has *prima facie* authority to decide all emergent questions which necessarily require decision at the time, his decision of these questions will naturally govern, and properly govern, the entry of the minute in the books; and, though in no sense conclusive, it throws the burden of proof upon the other side, who may say, contrary to the entry in the minute book following the decision of the chairman, that the result of the poll was different from that there recorded" (*re* Indian Zoedone Co., 1884, 26 Ch. D., p. 77).

Evidence may, so far as the Act is concerned, be given to show what in fact was done even if this contradicts the minutes (*re* Fireproof Doors, 1916, 2 Ch. 142). "As they were directors, the minute is admissible against them; but none the less does other evidence appear admissible though the existence of the minute is a circumstance to be considered in judging of its weight" (*re* Pyle Works, No. 2, 1891, 1 Ch. 184).

Articles may sometimes provide that the minutes of a meeting if purporting to be signed by the chairman shall be "conclusive evidence without any further proof of the fact therein stated." In such a case evidence cannot be given to contradict minutes so signed unless it can first be shown that the minutes have been written up fraudulently (Kerr *v.* John Mottram Ltd., 1940, Ch. 657).

The Secretary should make the necessary notes as each meeting, whether general or of the board, proceeds and subsequently write up the minutes in the minute book.

The secretary should take care that the record is absolutely impartial and free from ambiguity, that the exact account of what was actually agreed upon and nothing

more is minuted, and that it is sufficiently detailed and complete, so that an absent member can fully understand from the record what was done at the meeting. In the case of board meetings the names of directors present should be recorded; the names of other persons, if recorded, should be stated as being "in attendance."

A director who is present at a meeting of the board at which the minutes of a previous board meeting are confirmed, even though he be a party to their confirmation, is not thereby made responsible for what was resolved upon at such previous board meeting if the resolution has been acted upon before the minutes are confirmed (*re* Lands Allotment Co., 1894, 1 Ch. 616, at p. 635, Burton *v.* Bevan, 1908, 2 Ch. 240). He is, however, thereby given notice that such resolution was passed.

In the case of resolutions of directors not carried unanimously it is desirable to record the names of those who voted for and against the resolution, if there is a request for such a record. A director is not entitled to have his protest recorded in the minutes, but if he votes against a motion he is entitled to have that fact noted in the minutes if he so desires.

It is not essential to the validity of the exercise of powers of directors that they should be formally embodied in formal resolutions, provided that the minutes record the substance of the decision arrived at (*re* Land Credit Co., 1869, L. R., 4 Ch., at p. 473).

CHAPTER 21

MEETINGS IN A WINDING UP

THIS Part has hitherto been concerned with meetings held in relation to the affairs of a company while it is a going concern. In this chapter are noticed the main provisions dealing with meetings held in connection with the winding up of companies.

Various classes of meetings are required to be held by the Act and, in addition, the Companies Winding Up Rules, 1949 (S. I., No. 330) contain provisions dealing with meetings of creditors and contributories in a winding up by the Court and of creditors in a creditors voluntary winding up.

(1) MEETINGS OF CREDITORS AND CONTRIBUTORIES IN A WINDING UP BY THE COURT

The first meetings held in a winding up of this kind are governed by Section 239, which provides as follows:

(*a*) The official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such.

(*b*) The official receiver shall summon separate meetings of the creditors and contributors of the company for the purpose of determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the official receiver.

(*c*) The Court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determination of the meetings of the creditors and contributories in respect of the matter aforesaid, the Court shall decide the difference and make such order thereon as the Court may think fit.

(*d*) In a case where the liquidator is not appointed by the Court, the official receiver shall be the liquidator of the company.

(*e*) The official receiver shall by virtue of his office be the liquidator during any vacancy.

(*f*) A liquidator shall be described where a person other than the official receiver is liquidator, by the style of "the liquidator," and, where the official receiver is liquidator, by the style of "the official receiver and liquidator," of the particular company in respect of which he is appointed, and not by his individual name.

Contributory is defined by Section 213 to mean every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are deemed to be contributories, includes any person alleged to be a contributory. A holder of fully paid shares is included in the term (Anglesea Colliery Co., 1866, L. R., 1 Ch. 555).

It is also the business of these first meetings to determine whether or not application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed (Section 252).

The Winding Up Rules contain the following provisions as to these meetings:

121. Unless the Court otherwise directs, the meetings of creditors and contributories under Section 239 of the Act (hereinafter referred to as the first meetings of creditors and contributories) shall be held within one month or, if a Special Manager has been appointed, then within six weeks after the date of the winding-up order. The dates of such meetings shall be fixed and they shall be summoned by the official receiver.

122. The official receiver shall forthwith give notice of the dates fixed by him for the first meetings of creditors and contributories to the Board of Trade, who shall gazette the same.

123. The first meetings of creditors and contributories shall be summoned as hereinafter provided.

124. The notices of first meetings of creditors and contributories may be in Forms 71 and 72 appended thereto, and the notices to creditors shall state a time within which the creditors must lodge their proofs in order to entitle them to vote at the first meeting.

125. The official receiver shall also give to each of the directors and other officers of the company who in his opinion ought

to attend the first meetings of creditors and contributories seven days' notice of the time and place appointed for each meeting. The notice may either be delivered personally or sent prepaid by letter post, as may be convenient. It shall be the duty of every director or officer who receives notice of such meeting to attend if so required by the official receiver, and if any such director or officer fails to attend the official receiver shall report such failure to the Court.

126.—(1) The official receiver shall also, as soon as practicable send to each creditor mentioned in the company's statement of affairs, and to each person appearing from the company's books or otherwise to be a contributory of the company a summary of the company's statement of affairs, including the causes of its failure and any observations thereon which the official receiver may think fit to make. The proceedings at a meeting shall not be invalidated by reason of any summary or notice required by these rules not having been sent or received before the meeting.

(2) Where prior to the winding-up order the company has commenced to be wound up voluntarily the official receiver may, if in his absolute discretion he sees fit so to do, send to the persons aforesaid or any of them an account of such voluntary winding up, showing how such winding up has been conducted and how the property of the company has been disposed of and any observations which the official receiver may think fit to make on such account or on the voluntary winding up.

Subsequent meetings of creditors and contributories may also be called.

Section 246 provides as follows:

(1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the Court in England shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be.

(3) The liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

Section 346, which applies to all classes of winding up, provides as follows:

(1) The Court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result to the Court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

The following provisions of the Winding Up Rules deal with meetings of creditors and contributories in a winding up by the Court and meetings of creditors in a creditors' voluntary winding up.

127.—(1) In addition to the first meetings of creditors and contributories and in addition also to meetings of creditors and contributories directed to be held by the Court under Section 346 of the Act (hereinafter referred to as Court meetings of creditors and contributories), the liquidator in any winding up by the Court may himself from time to time subject to the provisions of the Act and the control of the Court summon, hold and conduct meetings of the creditors or contributories (hereinafter referred to as liquidator's meetings of creditors and contributories) for the purpose of ascertaining their wishes in all matters relating to the winding up.

(2) In any creditors' voluntary winding up the liquidator may himself from time to time summon, hold and conduct meetings of creditors for the purpose of ascertaining their wishes in all matters relating to the winding up (such meetings and all

meetings of creditors which a liquidator or a company is by the Act required to convene in or immediately before such a voluntary winding up and all meetings convened by a creditor in a voluntary winding up under these rules are hereinafter called voluntary liquidation meetings).

128. Except where and so far as the nature of the subject-matter or the context may otherwise require, the Rules as to meetings hereinafter set out shall apply to first meetings, Court meetings, Liquidator's meetings of creditors and contributories, and voluntary liquidation meetings, but so nevertheless that the said Rules shall take effect as to first meetings subject and without prejudice to any express provisions of the Act and as to Court meetings subject and without prejudice to any express directions of the Court.

129.—(1) The Official Receiver or Liquidator shall summon all meetings of creditors and contributories by giving not less than seven days' notice of the time and place thereof in the London Gazette and in a local paper; and shall not less than seven days before the day appointed for the meeting send by post to every person appearing by the company's books to be a creditor of the company notice of the meeting of creditors, and to every person, appearing by the company's books or otherwise to be a contributory of the company, notice of the meetings of contributories. [*i.e.* seven clear days.]

(2) The notice to each creditor shall be sent to the address given in his proof, or if he has not proved to the address given in the statement of affairs of the company, if any, or to such other address as may be known to the person summoning the meeting. The notice to each contributory shall be sent to the address mentioned in the company's books as the address of such contributory, or to such other address as may be known to the person summoning the meeting.

(3) In the case of meetings under Section 297 of the Act [*i.e.* to fill a vacancy in the office of liquidator] the continuing liquidator or if there is no continuing liquidator any creditor may summon the meeting.

(4) This rule shall not apply to meetings under Section 293 [dealing with the first meetings of creditors held in connection with a creditors' voluntary winding up] or Section 300 of the Act. [dealing with the final meeting in a creditors' voluntary winding up].

130. A certificate by the Official Receiver or other officer of the Court, or by the clerk of any such person, or an affidavit by the Liquidator, or creditor, or his solicitor, or the clerk of either of such persons, or as the case may be by some officer of the company or its solicitor or the clerk of such company or solicitor

that the notice of any meeting has been duly posted, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

131. Every meeting shall be held at such place as is in the opinion of the person convening the same most convenient for the majority of the creditors or contributories or both. Different times or places or both may if thought expedient be named for the meetings of creditors and for the meetings of contributories.

132. The costs of summoning a meeting of creditors or contributories at the instance of any person other than the Official Receiver or Liquidator shall be paid by the person at whose instance it is summoned who shall before the meeting is summoned deposit with the Official Receiver or Liquidator (as the case may be) such sum as may be required by the Official Receiver or Liquidator as security for the payment of such costs. The costs of summoning such meeting of creditors or contributories, including all disbursements for printing, stationery, postage and the hire of room, shall be calculated at the following rate for each creditor or contributory to whom notice is required to be sent, namely, two shillings per creditor or contributory for the first 20 creditors or contributories, one shilling per creditor or contributory for the next 30 creditors or contributories, sixpence per creditor or contributory for any number of creditors or contributories after the first 50. The said costs shall be repaid out of the assets of the company if the Court shall by order or if the creditors or contributories (as the case may be) shall by resolution so direct. This rule shall not apply to meetings under Section 293 [*post*] or 297 of the Act [casual vacancy in office of Liquidator].

133. Where a meeting is summoned by the Official Receiver or the Liquidator, he or someone nominated by him shall be Chairman of the meeting. At every other meeting of creditors or contributories the Chairman shall be such person as the meeting by resolution shall appoint. This rule shall not apply to meetings under Section 293 of the Act.

134. At a meeting of creditors a resolution shall be deemed to be passed when a majority in number and value of the creditors present personally or by proxy and voting on the resolution have voted in favour of the resolution, and at a meeting of the contributories in a resolution shall be deemed to be passed when a majority in number and value of the contributories present personally or by proxy, and voting on the resolution, have voted in favour of the resolution, the value of the contributories being determined according to the number of votes conferred on each contributory by the regulations of the company.

[If the majority in value differs from the majority in number there is no resolution, but the Court inclines to the view of the majority in value (*re* Bloxwich Iron & Steel Co., 1894, W. N. 111).]

135. The Official Receiver or as the case may be the Liquidator shall file with the Registrar a copy certified by him of every resolution of a meeting of creditors or contributories in a winding up by the Court.

136. Where a meeting of creditors or contributories is summoned by notice the proceedings and resolutions at the meeting shall unless the Court otherwise orders be valid notwithstanding that some creditors or contributories may not have received the notice sent to them. [The Court will probably otherwise order if an important creditor has not been represented.]

137. The Chairman may with the consent of the meeting adjourn it from time to time and from place to place, but the adjourned meeting shall be held at the same place as the original meeting unless in the resolution for adjournment another place is specified or unless the Court otherwise orders.

138.—(1) A meeting may not act for any purpose except the election of a chairman, the proving of debts and the adjournment of the meeting unless there are present or represented thereat in the case of a creditors' meeting at least three creditors entitled to vote or in the case of a meeting of contributories at least three contributories or all the creditors entitled to vote or the number of contributories as the case may be shall not exceed three.

(2). If within half an hour from the time appointed for the meeting a quorum of creditors or contributories is not present or represented the meeting shall be adjourned to the same day in the following week at the same time and place or to such other day or time or place as the Chairman may appoint but so that the day appointed shall be not less than seven or more than twenty-one days from the day from which the meeting was adjourned.

139. In the case of a first meeting of creditors or of an adjournment thereof a person shall not be entitled to vote as a creditor unless he has duly lodged with the Official Receiver not later than the time mentioned for that purpose in the notice convening the meeting or adjourned meeting a proof of the debt which he claims to be due to him from the company. In the case of a Court meeting or Liquidator's meeting of creditors a person shall not be entitled to vote as a creditor unless he has lodged with the Official Receiver or Liquidator a proof of the debt which he claims to be due to him from the company and such proof has been admitted wholly or in part before the date

on which the meeting is held. Provided that this and the next four following rules shall not apply to a Court meeting of creditors held prior to the first meeting of creditors. This rule shall not apply to any creditors or class of creditors who by virtue of the rules or any directions given thereunder are not required to prove their debts or to any voluntary liquidation meeting.

140. A creditor shall not vote in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained, nor shall a creditor vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company, and against whom a Receiving Order in Bankruptcy has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

[A debt the value of which cannot be ascertained means one dependent on the happening of some future event (*re* Dummelow, 1873, L. R., 8 Ch. 997). The bill of exchange must be produced, Rule 102.]

141. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof or in a voluntary liquidation in such a statement as is hereinafter mentioned the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

[As to this proviso a mistake as to value is not inadvertence nor where there has been deliberate election (*re* Piers, 1898, 1 Q. B. 627, and see *re* Rubber & Produce Investment Trust 1915, 1 Ch. 382; *re* Charles Reynolds & Co., 1895, W. N. 31).]

142. The Official Receiver or Liquidator may within twenty-eight days after a proof or in a voluntary liquidation a statement estimating the value of a security as aforesaid has been used in voting at a meeting require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated with an addition thereto of twenty per cent.: Provided that where a creditor has valued his security he may at any time before being required to give it up correct the valuation by a new proof and deduct the new value from his debt, but in that case the said addition of twenty per cent. shall not be made if the security is required to be given up.

143. The Chairman shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether a proof shall be admitted or rejected he shall mark it as objected to and allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.

[Under rule 14 of the First Schedule to the Bankruptcy Act, 1914, which provides that the chairman of a meeting of creditors shall have power to admit or reject a proof for the purpose of voting, the chairman of each meeting has power to admit or reject a proof for the purpose of voting and he is not bound by the decision of the chairman of the first meeting (*re* Potts, 1934, 50 T. L. R. 193).]

144. For the purpose of voting at any voluntary liquidation meetings a secured creditor shall unless he surrender his security lodge with the Liquidator or where there is no Liquidator at the Registered Office of the Company before the meeting a statement giving the particulars of his security, the date when it was given and the value at which he assesses it.

145.—(1) The Chairman shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose and the minutes shall be signed by him or by the Chairman of the next ensuing meeting.

[These minutes are the only proper record of proceedings (*re* Ratcliffe, 1875, L. R., 10 Ch. 631).]

(2) A list of creditors and contributories present at every meeting shall be made and kept as in Form 74.

Provision is made for voting at these meetings by proxy by the following rules of the Winding Up Rules.

146. A creditor or a contributory may vote either in person or by proxy. Where a person is authorised in manner provided by Section 139 [*ante*, p. 117] of the Act to represent a corporation at any meeting of creditors or contributories such person shall produce to the Official Receiver or Liquidator or other the Chairman of the meeting a copy of the resolution so authorising him. Such copy must either be under the seal of the corporation or must be certified to be a true copy by the secretary or a director of the corporation. The succeeding rules as to proxies shall not (unless otherwise directed by the Court) apply to a Court meeting of creditors or contributories prior to the first meeting.

[A creditor who has assigned his debt after proof can still vote (*re* Baum, 1880, 13 Ch. D. 424).]

147. Every instrument of proxy shall be in accordance with the appropriate form in the Appendix.

148. General and special forms of proxy shall be sent to the creditors and contributories with the notice summoning the meeting, and neither the name nor description of the Official Receiver or Liquidator or any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

149. A creditor or a contributory may give a general proxy to any person.

150. A creditor or a contributory may give a special proxy to any person to vote at any specified meeting or adjournment thereof:

(*a*) for or against the appointment or continuance in office of any specified person as Liquidator or Member of the Committee of Inspection, and;

(*b*) on all questions relating to any matter other than those above referred to and arising at the meeting or an adjournment thereof.

151. Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a Liquidator in obtaining proxies or in procuring his appointment as Liquidator except by the direction of a meeting of creditors or contributories, the Court if it thinks fit may order that no remuneration be allowed to the person by whom or on whose behalf the solicitation was exercised notwithstanding any resolution of the Committee of Inspection or of the creditors or contributories to the contrary.

152. A creditor or a contributory in a winding up by the Court may appoint the Official Receiver or Liquidator and in a voluntary winding up the Liquidator or if there is no Liquidator the Chairman of a meeting to act as his general or special proxy.

[An argument based on earlier cases that this rule did not mean what it says failed in *re* General Mortgage Society (Great Britain) Ltd. (1942, 1 All E. R. 414).]

153. No person acting either under a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer in a position to receive any remuneration out of the estate of the company otherwise than as a creditor rateably with the other creditors of the company: Provided that where any person holds special proxies to vote for an application to the Court in favour of the appointment of himself as Liquidator he may use the said proxies and vote accordingly.

154.—(1) A proxy intended to be used at the first meeting of creditors or contributories, or an adjournment thereof, shall be lodged with the Official Receiver not later than the time mentioned for that purpose in the notice convening the meeting or

the adjourned meeting, which time shall be not earlier than twelve o'clock at noon of the day but one before, nor later than twelve o'clock at noon of the day before the day appointed for such meeting, unless the Court otherwise directs.

(2) In every other case a proxy shall be lodged with the Official Receiver or Liquidator in a winding up by the Court, with the company at its registered office for a meeting under Section 293 of the Act, and with the Liquidator or if there is no Liquidator with the person named in the notice convening the meeting to receive the same in a voluntary winding up not later than four o'clock in the afternoon of the day before the meeting or adjourned meeting at which it is to be used.

(3) No person shall be appointed a general or special proxy who is a minor.

155. Where an Official Receiver who holds any proxies cannot attend the meeting for which they are given, he may, in writing, depute some person under his official control to use the proxies on his behalf and in such manner as he may direct.

156. The proxy of a creditor blind or incapable of writing may be accepted, if such creditor has attached his signature or mark thereto in the presence of a witness, who shall add to his signature his description and residence; Provided that such witness shall have certified at the foot of the proxy that all such insertions have been made at the request and in the presence of the creditor before he attached his signature or mark.

(2) MEETINGS OF CREDITORS AND THE COMPANY IN A VOLUNTARY WINDING UP

A voluntary winding up is either a creditors' or a members' voluntary winding up. Under Section 283 the winding up will be a members' voluntary winding up where before the resolution for winding up is passed the directors have made a statutory declaration that they have made a full inquiry into the affairs of the company and have formed the opinion that the company will be able to pay its debts in full within a specified period not exceeding twelve months from the commencement of the winding up. If this declaration is not made the winding up will be a creditors' voluntary winding up.

The section makes it an offence to make this declaration without reasonable grounds therefor, and further provides that if opinion expressed therein turns out to be unfounded

the onus is on the persons making the declaration to show that they had reasonable grounds for making it.

In both kinds of voluntary winding up, meetings of the company continue to be held after the commencement of the winding up and these meetings are not referred to as meetings of contributories but as meetings of the company.

(*a*) *Provisions applicable to a Members' Voluntary Winding Up.*

The Act contains the following provisions applicable in this case:

285.—(1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof.

286.—(1) If a vacancy occurs by death, resignation, or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.

289.—(1) Subject to the provisions of Section two hundred and ninety-one of this Act [p. 186], in the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the Board of Trade may allow, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding ten pounds.

290.—(1) Subject to the provisions of the next following section [p. 189], as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the

property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement in the Gazette, specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within one week after the meeting, the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this sub-section the liquidator shall be liable to a fine not exceeding five pounds for every day during which the default continues:

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this sub-section as to the making of the return shall be deemed to have been complied with.

(4) The registrar on receiving the account and either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved:

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under this section is made, within seven days after the making of the order, to deliver to the registrar an office copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(6) If the liquidator fails to call a general meeting of the company as required by this section, he shall be liable to a fine not exceeding fifty pounds.

Under Section 303 (1) (*e*) the liquidator has the power in a voluntary winding up of any kind to summon general meetings of the company. In an ordinary members' voluntary winding up where it is clear that the company's debts will be paid within the time stated in the declaration of solvency there will first be the meeting at which the resolution for winding up is passed and this meeting will

generally also appoint the liquidator. There will then be the yearly meetings required by Section 289 if the winding up so long continues, any meetings the liquidator may choose to call and the final meeting. These meetings will be called and conducted in accordance with the company's articles and are not affected by the Winding Up Rules.

In such a case the creditors have no say in the conduct of a members' voluntary winding up. Section 288, however, provides that if, in the case of a winding up commenced after the commencement of the Act, the liquidator is at any time of the opinion that the company will not be able to pay its debts in full within the period stated in the declaration of solvency, the liquidator is to summon forthwith a meeting of the creditors and lay before them a statement of the assets and liabilities of the company.

This section is new and provides machinery for bringing creditors into a winding up which commenced as a members' voluntary winding up but should have commenced as a creditors' voluntary winding up.

Section 291, the section referred to also in the Sections 289 and 290 set out above, requires that when the liquidator takes this step the provisions of those sections are superseded, and the meetings that the liquidator is thereafter required to call are those required by the provisions dealing with a creditors' voluntary winding up.

(*b*) *Provisions applicable to a creditors' voluntary winding up.*

293.—(1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once in the Gazette and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company is situate.

(3) The directors of the company shall:

(*a*) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of the creditors to be held as aforesaid; and

(*b*) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of Sub-section (1) of this section shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made:

(*a*) by the company in complying with Sub-sections (1) and (2) of this section;

(*b*) by the directors of the company in complying with Sub-section (3) of this section;

(*c*) by any director of the company in complying with Sub-section (4) of this section;

the company, directors or director, as the case may be, shall be liable to a fine not exceeding one hundred pounds, and, in the case of default by the company, every officer of the company who is in default shall be liable to the like penalty.

294. The creditors and the company at their respective meetings mentioned in the last foregoing section may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator:

Provided that in the case of different persons being nominated, any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors or appointing some other person to be liquidator instead of the person appointed by the creditors.

295.—(1) The creditors at the meeting to be held in pursuance of Section two hundred and ninety-three of this Act or at any subsequent meeting may, if they think fit, appoint a

committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under this provision the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to the provisions of this section and to general rules, the provisions of Sections two hundred and fifty-three (except Sub-section (1)) and two hundred and fifty-five of this Act shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the Court.

A vacancy in the office of liquidator is filled by the creditors (Section 297). The following meetings are required by the Act to be held:

299.—(1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the Board of Trade may allow, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding ten pounds.

300.—(1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement in the Gazette specifying the time, place and object thereof, and published one month at least before the meeting.

The remainder of Section 300 contains provisions for returns of this meeting, dissolution of the company, etc.

These last two sections will apply in the case of a members' voluntary winding up when the liquidator has called a meeting under Section 288 (*ante*).

Rules 129 to 156 (*ante*) will apply to meetings of creditors called in accordance with these provisions except where the rules themselves otherwise provide and in addition to these meetings a liquidator in any creditors' voluntary winding up may from time to time summon, hold, and conduct meetings of creditors for the purpose of ascertaining their wishes (Rule 127 (2)).

In the rare event of an order being made for a winding up under supervision, the first meetings will usually have been already held. The subsequent meetings will generally be held as if the winding up was a winding up by the Court (Section 315 (2)).

(3) MEETINGS OF COMMITTEES OF INSPECTION

The Act makes provision for the appointment of committees of inspection in the case of a winding up by the Court at the first meetings of creditors and contributories (Section 252). The committee of inspection, if there is one, exercises a measure of control over the winding up and its consent is required to the exercise by the liquidator of certain powers. Section 253 contains the following provisions dealing with these committees.

(1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories or as, in case of difference, may be determined by the Court:

Provided that, where in Scotland a winding-up order has been made on the ground that a company is unable to pay its debts, the committee shall consist of creditors or persons holding general powers of attorney from creditors.

(2) The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least

once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting but shall not act unless a majority of the committee are present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt or compounds or arranges with his creditors or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors if he represents creditors, or of contributories if he represents contributories, of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, reappoint the same or appoint another creditor or contributory to fill the vacancy:

Provided that if the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy to be filled he may apply to the Court and the Court may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

The Act also provides for the appointment of a committee of inspection in the case of a creditors' voluntary winding up (Section 295). To such a committee the provisions of Section 253, except those of Sub-section (1), will apply (Section 295 (2)).

PART III

MEETINGS OF LOCAL AUTHORITIES

CHAPTER 22

ENGLAND AND WALES (EXCLUSIVE OF LONDON)

THE general principles governing meetings discussed in Part I apply to meetings of local authorities except in so far as they are modified by statutory provisions, or by by-laws or standing orders properly adopted by any particular local authority.

No provision for meetings of local authorities to be open to the public is made except in regard to parish councils. As to the admission of the Press, see Local Authorities (Admission of the Press to Meetings) Act, 1908, *post* p. 237, and Mayor of Tenby *v.* Mason, *ante*, p. 72.

The Local Government Act, 1933,* divides England and Wales, for the purposes of local government, into administrative counties and county boroughs. The administrative counties are divided into county districts, which are either non-county boroughs, urban districts, or rural districts. The county boroughs consist of one or more parishes, and county districts also consist of one or more parishes.

The Act contains the main statutory provisions relating to the constitution of the local authorities for these various areas and to the meetings of such bodies and also provides for meetings of the local government electors of a parish known as parish meetings.

The meetings of the various councils are governed by the provisions contained in the relevant part of the Third Schedule to the Act. In addition the provisions of Part V of that Schedule apply to meetings of every kind of council

* The Act has been amended by various Acts. In this chapter where sections or schedules are quoted they are, unless the context otherwise requires, sections or schedules of the Act as amended.

and of committees of any council (Section 75). The rights of voting of members of a council are, however, subject to the provisions of Section 76, which is as follows:

S. 76.—(1) *Disability of members of authorities on account of interest in contracts.*—If a member of a local authority has any pecuniary interest, direct or indirect, in any contract or proposed contract or other matter, and is present at a meeting of the local authority at which the contract or other matter is the subject of consideration, he shall at the meeting, as soon as practicable after the commencement thereof, disclose the fact, and shall not take part in the consideration or discussion of, or vote on any question with respect to, the contract or other matter:

Provided that this section shall not apply to an interest in a contract or other matter which a member may have as a ratepayer or inhabitant of the area, or as an ordinary consumer of gas, electricity, or water, or to an interest in any matter relating to the terms on which the right to participate in any service, including the supply of goods, is offered to the public.

(2) For the purposes of this section a person shall (subject as hereafter in this sub-section provided) be treated as having indirectly a pecuniary interest in a contract or other matter, if:

(*a*) he or any nominee of his is a member of a company or other body with which the contract is made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or

(*b*) he is a partner, or is in the employment, of a person with whom the contract is made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration;

Provided that:

(i) this sub-section shall not apply to membership of, or employment under, any public body;

(ii) a member of a company or other body shall not,

by reason only of his membership, be treated as being so interested if he has no beneficial interest in any shares of that company or other body.

(2*a*) Where a member of a local authority has indirectly a pecuniary interest in a contract or other matter and would not fall to be treated as having such an interest but for the fact that he has a beneficial interest in shares of a company or other body, then, if the total nominal value of those shares does not exceed [five] hundred pounds or one hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, so much of Sub-section (1) of this section as prohibits him from taking part in the consideration or discussion of, and from voting on any question with respect to, the contract or other matter shall not apply to him, without prejudice, however, to the duty of disclosure imposed by the said Sub-section (1):

Provided that where the share capital of the company or other body is of more than one class, this sub-section shall not apply if the total nominal value of all the shares of any one class in which he has a beneficial interest exceeds one hundredth part of the total issued share capital of that class of the company or other body.

(3) In the case of married persons living together the interest of one spouse shall, if known to the other, be deemed for the purposes of this section to be also an interest of that other spouse.

(4) A general notice given in writing to the clerk of the authority by a member thereof to the effect that he or his spouse is a member or in the employment of a specified company or other body, or that he or his spouse is a partner or in the employment of a specified person, shall, unless and until the notice is withdrawn, be deemed to be a sufficient disclosure of his interest in any contract, proposed contract, or other matter relating to that company or other body or to that person which may be the subject of consideration after the date of the notice.

(5) The clerk of the authority shall record in a book

to be kept for the purpose particulars of any disclosure made under Sub-section (1) of this section, and of any notice given under Sub-section (4) thereof, and the book shall be open at all reasonable hours to the inspection of any member of the local authority.

(6) If any person fails to comply with the provisions of Sub-section (1) of this section, he shall for each offence be liable on summary conviction to a fine not exceeding fifty pounds, unless he proves that he did not know that a contract, proposed contract, or other matter in which he had a pecuniary interest was the subject of consideration at the meeting.

(7) A prosecution for an offence under this section shall not be instituted except by or on behalf of the Director of Public Prosecutions.

(8) The county council, as respects a member of a parish council, and the Minister, as respects a member of any other local authority, may, subject to such conditions as the county council or the Minister, as the case may be, may think fit to impose, remove any disability imposed by this section in any case in which the number of members of the local authority so disabled at any one time would be so great a proportion of the whole as to impede the transaction of business, or in any other case in which it appears to the county council or the Minister, as the case may be, that it is in the interests of the inhabitants of the area that the disability should be removed.

(9) A local authority may by standing orders provide for the exclusion of a member of the authority from a meeting of the authority whilst any contract, proposed contract, or other matter in which he has such an interest as aforesaid is under consideration.

(10) In this section, the expression "shares" includes stock and the expression "share capital" shall be construed accordingly.

In R. *v.* Hendon Rural Council (1933, 2 K. B. 696), the Divisional Court held that a councillor who is

interested in the development of a building site pending the approval of a town planning scheme may not vote thereon.

COUNTY COUNCILS

The Act provides that for every administrative county there is to be a county council consisting of the chairman, county aldermen, and county councillors, and that it shall be a body corporate (Section 2) and also contains provisions for the election and retirement of the aldermen and councillors.

Chairman and Vice-Chairman

S. 3—(1) *Chairman of county council.*—The chairman of a county council shall be elected annually by the county council from among the county aldermen or county councillors or persons qualified to be county aldermen or county councillors.

(2) The chairman shall, unless he resigns or ceases to be qualified or becomes disqualified, continue in office until his successor becomes entitled to act as chairman.

(3) During his term of office, the chairman shall continue to be a member of the council notwithstanding the provisions of this Act relating to the retirement of county councillors at the end of three years.

(4) The county council may pay to the chairman such remuneration as they think reasonable.

The Local Government Act, 1948, Part VI, as amended by the Local Government (Miscellaneous Provisions) Act, 1953, section 16, provides for travelling and subsistence allowances, as well as limited compensation for loss of earnings for members of all local authorities.

(5) The chairman shall, by virtue of his office, be a justice of the peace for the county, but before acting as such justice he shall take the oaths required by law to be taken by a justice of the peace for the county, unless he is, at the date on which he becomes entitled to act as chairman, a justice of the peace for the county and has

taken the oaths required by law to be taken to enable him to act as a justice of the peace for the county.

S. 4—(1) *Election of chairman.*—The election of the chairman shall be the first business transacted at the annual meeting of the county council.

(2) An outgoing county alderman shall not, as alderman, vote at the election of a chairman.

(3) In the case of an equality of votes, the person presiding at the meeting, whether or not entitled to vote in the first instance, shall have a casting vote.

S. 5—(1) *Vice-chairman.*—A county council shall appoint a member of the council to be vice-chairman of the council.

(2) The vice-chairman shall, unless he resigns or ceases to be qualified or becomes disqualified, hold office until immediately after the election of a chairman at the next annual meeting of the council and during that time shall continue to be a member of the council notwithstanding the provisions of this Act relating to the retirement of county councillors at the end of three years.

(3) Subject to any standing orders made by the county council, anything authorised or required to be done by, to or before the chairman may be done by, to or before the vice-chairman, except that he shall not, as vice-chairman, act as a justice of the peace.

Part I of the Third Schedule to the Act is the part which deals with county council meetings and is as follows:

PART I

1.—(1) *Days and hours of meetings.*—A county council shall in every year hold an annual meeting and at least three other meetings, which shall be as near as may be at regular intervals, for the transaction of general business.

(2) The annual meeting shall be held:

(*a*) in a year which is the year of election of county councillors, on the twelfth day after such election, or such other day within twenty-five days after such election as the county council may fix; and

(*b*) in any other year, on such days in the months of March, April, or May as the county council may fix;

and the meeting shall be held at such hour as the council may fix, or if no hour is so fixed at twelve noon.

(3) The other meetings shall be held at such hour and on such other days as the county council at the annual meeting decide, or by standing order determine.

(4) Meetings of a county council shall be held at such place, either within or without the county, as the council may direct.

2.—(1) *Convening meetings.*—The chairman of a county council may call a meeting of the council at any time.

(2) If the chairman refuses to call a meeting of the council after a requisition for that purpose, signed by five members of the council, has been presented to him, or if, without so refusing, the chairman does not call a meeting within seven days after such requisition has been presented to him, any five members of the council, on that refusal or on the expiration of seven days, as the case may be, may forthwith call a meeting of the council.

(3) Three clear days at least before a meeting of a county council:

(*a*) notice of the time and place of the intended meeting shall be published at the offices of the council, and where the meeting is called by members of the council the notice shall be signed by those members and shall specify the business proposed to be transacted thereat; and

(*b*) a summons to attend the meeting, specifying the business proposed to be transacted thereat, and signed by the clerk of the county council, shall be left at or sent by post to the usual place of residence of every member of the council:

Provided that want of service of the summons on any member of the council shall not affect the validity of a meeting.

[Registered post, formerly obligatory, is no longer necessary.]

(4) The notice of a meeting of a county council at which a resolution for the payment of a sum out of the county fund (otherwise than for ordinary periodical payments), or a resolution for incurring any costs, debt, or liability exceeding fifty pounds, will be proposed, shall state the amount of the said sum, costs, debt, or liability, and the purposes for which they are to be paid or incurred.

(5) Except in the case of business required by this Act to be transacted at the annual meeting of the council, no business shall be transacted at a meeting of the council other than that specified in the summons relating thereto.

[See Longfield Parish Council *v.* Wright, 1918, 88 L. J. (Ch) 119, as to failure of a resolution owing to breach of a similar regulation.]

3.—(1) *Chairman of meeting.*—At a meeting of a county council the chairman of the council, if present, shall preside.

(2) If the chairman of the council is absent from a meeting of the council, the vice-chairman of the council, if present, shall preside.

(3) If both the chairman and vice-chairman of the council are absent from a meeting of the council, such county alderman, or in the absence of all the county aldermen such county councillor, as the members of the council present shall choose, shall preside.

4. *Quorum.*—Subject to the provisions of Part V of this Schedule, no business shall be transacted at a meeting of a county council unless at least one-fourth of the whole number of members of the council are present thereat.

Part V of the Third Schedule applies to the meetings of county councils as well as to meeting of other kinds of council and contains the following provisions:

PART V

Provisions relating to Local Authorities generally

1.—(1) *Decision on questions.*—Subject to the provisions of any enactment (including any enactment in this

Act) all acts of a local authority and all questions coming or arising before a local authority shall be done and decided by a majority of the members of the local authority present and voting thereon at a meeting of the local authority.

(2) In the case of an equality of votes the person presiding at the meeting shall have a second or a casting vote.

[The person presiding may therefore have an original vote on any matter. The method of voting is only prescribed by the Act in the case of meetings of district councils and parish councils (*post*) and consequently the standing orders of other authorities may provide for voting by means of division. In addition to the general disqualification on voting imposed by Section 76 (*ante*), Section 75 provides in the case of meetings of a county council that a county councillor elected for an electoral division consisting wholly of a county district or of some part of a county district may not vote on any matter involving only expenditure on account of which that county district is not, for the time being, liable to be charged.]

2. *Names of members present to be recorded.*—The names of the members present at a meeting of a local authority shall be recorded.

[Names of members can conveniently be recorded in the minutes of proceedings.]

3.—(1) *Minutes.*—Minutes of the proceedings of a meeting of a local authority, or of a committee thereof, shall be drawn up and entered in a book kept for that purpose, and shall be signed at the same or next ensuing meeting of the local authority or committee, as the case may be, by the person presiding thereat, and any minute purporting to be so signed shall be received in evidence without further proof.

[By section 283 of the Act of 1933, minutes are to be open to the inspection of any local government elector, on payment of a fee not exceeding 1s., who may also

make a copy thereof or an extract therefrom. This also includes minutes of committees if they have been actually submitted to the council (Williams *v.* Manchester Corporation, 1897, 45 W. R. 412). Minutes may be inspected by an agent of a local government elector (R. *v.* Glamorgan C.C., 1936, All E. R. 168), following the principle of R. *v.* Bedwellty U.D.C. (1934, 1 K. B. 333), where it was held that the accounts of a local authority may be inspected by an agent of the local government elector.]

(2) Until the contrary is proved, a meeting of a local authority or of a committee thereof in respect of the proceedings whereof a minute has been so made and signed shall be deemed to have been duly convened and held, and all the members present at the meeting shall be deemed to have been duly qualified, and where the proceedings are proceedings of a committee, the committee shall be deemed to have been duly constituted and to have had power to deal with the matters referred to in the minutes.

[Minutes are usually but not necessarily read, or taken as read if previously circulated to members before signing by the chairman. Confirmation of minutes means merely verification (R. *v.* Mayor of York, 1853, 1 E. & B. 594). A member does not make himself liable for any illegal act done at a meeting at which he was not present merely by voting subsequently for the confirmation of the minutes recording the illegal act (Burton *v.* Bevan, 1908, 2 Ch. 240).]

4. *Standing Orders.*—Subject to the provisions of this Act, a local authority may make standing orders for the regulation of their proceedings and business, and may vary or revoke any such orders.

[See *ante*, p. 37.]

5. *Vacancies, &c., not to invalidate proceedings.*—The proceedings of a local authority or of a committee thereof shall not be invalidated by any vacancy among their number, or by any defect in the election or qualification of any member thereof.

6. *Quorum in cases of disqualification.*—Where more than one-third of the members of a local authority become disqualified at the same time, then, until the number of members in office is increased to not less than two-thirds of the whole number of members of the local authority, the quorum of the local authority shall be determined by reference to the number of members of the local authority remaining qualified instead of by reference to the whole number of members of the local authority.

BOROUGH COUNCILS

The Act provides that a borough council shall exercise the powers of the municipal corporation of the borough and that it is to consist of the mayor, aldermen, and councillors (Section 17), and it contains provisions for election of the aldermen and councillors.

The Mayor

S. 18.—(1) *Qualification, term of office, salary, precedence, and powers of mayor.*—The mayor shall be elected annually by the council of the borough from among the aldermen or councillors of the borough or persons qualified to be aldermen or councillors of the borough.

[The mayor may thus be elected from outside the council if qualified to be an alderman or councillor.]

(2) The term of office of the mayor shall be one year, but he shall, unless he resigns or ceases to be qualified or becomes disqualified, continue in office until his successor becomes entitled to act as mayor.

(3) During his term of office, the mayor shall continue to be a member of the council, notwithstanding the provisions of this Act relating to the retirement of councillors of a borough at the end of three years.

(4) The council may pay to the mayor such remuneration as they think reasonable.

[Borough funds may not be used for the purchase of a chain of office (A. G. *v.* Batley Corporation, 1872, 26 L. T. 392). The Local Government Act, 1948, Part VI, as

amended by the Local Government (Miscellaneous Provisions) Act, 1953, Section 16, provides for travelling and subsistence allowances, as well as limited compensation for loss of earnings for members of all local authorities.]

(5) The mayor shall have precedence in all places in the borough:

Provided that nothing in this sub-section shall prejudicially affect His Majesty's royal prerogative.

(6) Save as otherwise expressly provided in this Act, nothing in this Act shall affect any functions of the mayor existing immediately before the commencement of this Act.

(7) In the case of a borough having a separate commission of the peace, the mayor shall, by virtue of his office, be a justice of the peace for the borough, but before acting as such justice he shall take the oaths required by law to be taken by a justice of the peace for the borough unless he is, at the date on which he becomes entitled to act as mayor, a justice of the peace for the borough and has taken the oaths required by law to be taken to enable him to act as a justice of the peace for the borough.

(8) In the case of a borough not having a separate commission of the peace, the mayor shall, during his term of office be a justice of the peace for the county in which the borough is situate, but before acting as such justice he shall take the oaths required by law to be taken by a justice of the peace for the county unless he is, at the date on which he becomes entitled to act as mayor, a justice of the peace for the county and has taken the oaths required by law to be taken to enable him to act as a justice of the peace for the county.

(9) The mayor, if present, shall be entitled to preside at all meetings of justices of the peace held in the borough:

Provided that the mayor shall not, by virtue of this sub-section, be entitled to preside at meetings of justices of the peace acting in and for the county in which the borough is situate except when acting in relation to the

business of the borough, or at meetings when any stipendiary magistrate having jurisdiction in the borough is engaged in administering justice.

(10) The mayor shall not be required to make the declaration required to be made by a justice of the peace for a borough under Section 157 of the Municipal Corporations Act, 1882.

S. 19.—(1) *Election of mayor.*—The election of the mayor shall be the first business transacted at the annual meeting of the council.

(2) An outgoing alderman shall not, as alderman, vote at the election of the mayor.

(3) In the case of an equality of votes, the person presiding at the meeting, whether or not entitled to vote in the first instance, shall have a casting vote.

[Schedule III, Part II, 3, provides that the mayor, if present, shall preside at meetings of the council even apparently if he be a candidate for re-election (R. *v.* Jackson, 1913, 3 K. B. 436, but also see R. *v.* White, 1867, L. R., 2 Q. B. 557). By Section 76 (1) (*ante*), he is debarred from voting for himself if a salary is attached to his office.]

S. 20.—(1) *Power of mayor to appoint deputy.*—The mayor may appoint an alderman or councillor of the borough to be deputy mayor, and the person so appointed shall, unless he resigns or ceases to be qualified or becomes disqualified, hold office until a newly elected mayor become entitled to act as mayor.

(2) The appointment of a deputy mayor shall be signified to the council in writing and be recorded in the minutes of the council.

(3) The deputy mayor may, if for any reason the mayor is unable to act, or the office of mayor is vacant, discharge all functions which the mayor as such might discharge, except that he shall not take the chair at a meeting of the council unless specially appointed by the meeting to do so, and shall not, as deputy mayor, act as a justice of the peace.

Part II of the Third Schedule contains the provisions applicable to meetings of borough councils and is as follows:

PART II

1.—(1) *Days and hours of meetings.*—The council of a borough shall in every year hold an annual meeting and at least three other meetings, which shall be as near as may be at regular intervals, for the transaction of general business.

(2) The annual meeting shall be held at twelve noon, or at such other hour as the council may from time to time determine, on the eleventh day after the election of borough councillors or such other day within the following seven days as the borough council may fix, and the other meetings shall be held at such hour on such other days as the council at the annual meeting decide, or by standing order determine.

[Section 295 provides that when the day on which anything is required to be done is a Sunday, Good Friday, Bank Holiday, or day appointed for public thanksgiving or mourning, the requirement shall be deemed to relate to the first day thereafter which is not one of such days.]

2.—(1) *Convening meetings.*—The mayor may call a meeting of the council at any time.

(2) If the mayor refuses to call a meeting after a requisition for that purpose, signed by five members, or by one-fourth of the whole number of members, of the council, whichever is the less, has been presented to him, or if, without so refusing, the mayor does not call a meeting within seven days after such requisition has been presented to him, any five members, or one-fourth of the whole number of members, of the council, whichever is the less, on that refusal or on the expiration of seven days, as the case may be, may forthwith call a meeting of the council.

(3) Three clear days at least before a meeting of the council of a borough:

(*a*) notice of the time and place of the intended meeting shall be published at the town hall, and where the meeting is called by members of the council the notice shall be signed by those members and shall specify the business proposed to be transacted thereat; and

(*b*) a summons to attend the meeting specifying the business proposed to be transacted thereat, and signed by the town clerk, shall be left at or *sent by post* to the usual place of residence of every member of the council:

Provided that want of service of the summons on any member of the council shall not affect the validity of a meeting.

(4) Except in the case of business required by this Act to be transacted at the annual meeting of the council, no business shall be transacted at a meeting of the council other than that specified in the summons relating thereto.

3.—(1) *Chairman of meeting.*—At a meeting of the council of a borough the mayor, if present, shall preside.

(2) If the mayor is absent from a meeting of the council, the deputy mayor, if chosen for that purpose by the members of the council then present, shall preside.

(3) If both the mayor and the deputy mayor are absent from a meeting of the council, or the deputy mayor being present is not chosen, such alderman, or in the absence of all the aldermen, such councillor, as the members of the council present shall choose, shall preside.

4. *Quorum.*—Subject to the provisions of Part V of this Schedule, no business shall be transacted at a meeting of the council of a borough, unless at least one-third of the whole number of members of the council are present thereat.

The provisions of Part V (*ante*, p. 204) apply to these meetings.

DISTRICT COUNCILS

The Act provides that every urban district is to have an urban district council and that subject to the provisions

of the Act every rural district is to have a rural district council. Every such council is a corporate body and is to consist of the chairman and councillors (Sections 31 and 32), and the Act provides for the method of electing the councillors. The Local Government Act, 1948, Part VI, as amended by the Local Government (miscellaneous Provisions) Act, 1953, Section 16, provides for travelling and subsistence allowances, as well as limited compensation for loss of earnings for members of all local authorities, and for the payment of an expense allowance to the chairman of a district council.

Chairman and Vice-Chairman of District Council

S. 33.—(1) *Chairman of district council.*—The chairman of a district council shall be elected annually by the council from among the councillors or persons qualified to be councillors of the district.

(2) The election of the chairman shall be the first business transacted at the annual meeting of the council.

(3) The chairman shall, unless he resigns or ceases to be qualified or becomes disqualified, continue in office until his successor becomes entitled to act as chairman.

(4) During his term of office the chairman shall continue to be a member of the council, notwithstanding the provisions of this Act relating to the retirement of district councillors at the end of three years.

(5) The chairman shall, by virtue of his office, be a justice of the peace for the county or for each county in which the district is wholly or in part situate, but before acting as a justice of the peace for a county, he shall take the oaths required by law to be taken by a justice of the peace for that county unless he is, at the date on which he becomes entitled to act as chairman, a justice of the peace for that county and has taken the oaths required by law to be taken to enable him to act as a justice of the peace for that county.

S. 34.—(1) *Vice-chairman.*—A district council may appoint a member of the council to be vice-chairman of the council, and the vice-chairman shall, unless he

resigns or ceases to be qualified or becomes disqualified, hold office until immediately after the election of a chairman at the next annual meeting of the council, and during that time shall continue to be a member of the council notwithstanding the provisions of this Act relating to the retirement of district councillors at the end of three years.

(2) Subject to any standing orders made by the district council, anything authorised or required to be done by, to or before the chairman may be done by, to or before the vice-chairman, except that he shall not, as vice-chairman, act as a justice of the peace.

The Part of the Third Schedule containing the provisions applicable to meetings of district councils is Part III, which is as follows:

PART III

1.—(1) *Days of meetings.*—The council of an urban or rural district (in this Part of this Schedule referred to as "the council") shall, in every year, hold an annual meeting and at least three other meetings for the transaction of general business.

(2) The annual meeting of the council shall be held on or as soon as conveniently may be after the twentieth day of May in every year.

(3) A meeting of the council shall not be held in premises licensed for the sale of intoxicating liquor, except in cases where no other suitable room is available for such meeting either free of charge or at a reasonable cost.

2.—(1) *Convening meetings.*—The chairman of the council may call a meeting of the council at any time.

(2) If the chairman refuses to call a meeting of the council after a requisition for that purpose, signed by five members, or by one-fourth of the whole number of members, of the council, whichever is the less, has been presented to him, or if, without so refusing, the chairman does not call a meeting within seven days after such requisition has been presented to him, any five members,

or one-fourth of the whole number of members, of the council, whichever is the less, on that refusal or on the expiration of seven days, as the case may be, may forthwith call a meeting of the council.

(3) Three clear days at least before a meeting of the council:

(*a*) notice of the time and place of the intended meeting shall be published at the offices of the council, and where the meeting is called by members of the council the notice shall be signed by those members and shall specify the business proposed to be transacted thereat; and

(*b*) a summons to attend the meeting, specifying the business proposed to be transacted thereat, and signed by the clerk of the council, shall be left at or sent by post to the usual place of residence of every member of the council:

Provided that want of service of the summons on any member of the council shall not affect the validity of a meeting.

3.—(1) *Chairman of meeting.*—At a meeting of the council the chairman of the council, if present, shall preside.

(2) If the chairman of the council is absent from a meeting of the council, the vice-chairman of the council, if present, shall preside.

(3) If both the chairman and vice-chairman of the council are absent from a meeting of the council, such councillor as the members of the council present shall choose shall preside.

4. *Quorum.*—Subject to the provisions of Part V of this Schedule, no business shall be transacted at a meeting of the council, unless at least one-third of the whole number of members of the council are present thereat:

Provided that in no case shall a larger quorum than seven members be required.

5. *Inspectors may attend meetings.*—An inspector appointed by the Minister shall be entitled to attend any

meeting of the council as and when directed by the Minister, and to take part in the proceedings thereat, but not to vote at the meeting.

6. *Mode of voting.*—The mode of voting at meetings of the council shall be by show of hands, and on the requisition of any member of the council the voting on any question shall be recorded so as to show whether each member present and voting gave his vote for or against that question.

[Names of members voting need not be recorded in future, unless any member requires it.]

The provisions of Part V of the Third Schedule (*ante*, p. 204) also apply to these meetings.

RURAL PARISHES

The Act provides that for every rural parish there shall be a parish meeting and that there shall be a parish council for every rural parish or group of parishes which before the coming into force of the Act had a parish council. It also provides that the county council shall by order establish a separate parish council for every rural parish which has not got one, if its population exceeds three hundred or if, in the case of a parish with a population of more than two hundred, the parish meeting so resolves. The county council may, but is not bound to, make such an order in other cases if the parish meeting so resolves (Section 43).

(1) PARISH MEETINGS

The parish meeting of a parish consists of the local government electors for the parish. Any act of a parish meeting may be signified by an instrument under the hands, or if a seal is necessary, under the hands and seals of the person presiding at the meeting and two other local government electors present at the meeting.

Where a rural parish has no separate parish council, the chairman of the parish meeting and the councillor or councillors representing the parish on the rural district

council constitute a body corporate called the representative body of the parish, and such body is to act as directed by the parish meeting. If the parish is represented by only one councillor on the district council, and he is also the chairman of the meeting, the district council appoints a local government elector for the parish to be a member of the representative body (Section 47).

Parish meetings are to be held and conducted in accordance with the provisions of Part VI of the Third Schedule to the Act, which is as follows:

PART VI

1.—(1) *Days and hours, &c., of meetings.*—The parish meeting of a rural parish shall assemble annually on some day between the first day of March and the first day of April, both inclusive, in every year.

(2) Subject as aforesaid, parish meetings shall be held on such days and at such times and places as may be fixed by the parish council, or, if there is no parish council, by the chairman of the parish meeting:

Provided that in a rural parish not having a separate parish council the parish meeting shall, subject to any provisions made by a grouping order, assemble at least twice in every year.

(3) The proceedings at a parish meeting shall not commence earlier than six o'clock in the evening.

(4) A parish meeting shall not be held in premises licensed for the sale of intoxicating liquor, except in cases where no other suitable room is available for such meeting either free of charge or at a reasonable cost.

2.—(1) *Convening meetings.*—A parish meeting may be convened by:

(*a*) the chairman of the parish council; or

(*b*) any two parish councillors; or

(*c*) in the case of a parish not having a parish council, the chairman of the parish meeting, or any person representing the parish on the rural district council; or

(*d*) any six local government electors for the parish.

(2) Not less than seven clear days before a parish meeting, public notice thereof shall be given specifying the time and place of the intended meeting and the business to be transacted thereat, and signed by the convener or conveners of the meeting:

Provided that if any business proposed to be transacted at a parish meeting relates to the establishment or dissolution of a parish council, or to the grouping of the parish with another parish, or to the adoption of any of the adoptive Acts, not less than fourteen days' notice of the meeting shall be given.

(3) A public notice of a parish meeting shall be given:

(*a*) by affixing the same to or near the principal door of each church or chapel in the parish [*i.e.* all churches and chapels of the Established Church (Ormerod *v.* Chadwick, 1847, 16 M. & W. 367; Parish Notices Act, 1837, s. 2).]; and

(*b*) by posting the same in some conspicuous place or places in the parish; and

(*c*) in such other manner, if any, as appears to the persons convening the meeting to be desirable for giving publicity to the notice.

3.—(1) *Chairman of meeting.*—If the chairman of a parish council is present at a parish meeting for the parish, he shall preside at the meeting.

The chairman of the parish council, if there is one, is entitled to attend the parish meeting whether or not he is a local government elector for the parish, but if he is not such an elector he may not vote except to give a casting vote (Section 77 (2)).

(2) In a rural parish not having a separate parish council the chairman of the parish meeting shall preside over all assemblies of the parish meeting at which he is present.

[In such a case the chairman is chosen at the annual assembly for the year and he continues in office until his successor is elected (Section 49 (8)). This provision is subject to the provisions of any order grouping the parish in question with any other parishes.]

(3) If the chairman of the parish council or the chairman of the parish meeting, as the case may be, is absent from an assembly of the parish meeting, the parish meeting may appoint a person to take the chair, and that person shall have, for the purpose of that meeting, the powers and authority of the chairman.

4.—*Business.*—A parish meeting may discuss parish affairs and pass resolutions thereon.

5.—(1) *Determination of questions.*—Subject to the provisions of this Act, each local government elector may, at a parish meeting or at a poll consequent thereon, give one vote and no more on any question.

(2) A question to be decided by a parish meeting shall, in the first instance, be decided by the majority of those present at the meeting and voting thereon, and the decision of the person presiding at the meeting as to the result of the voting shall be final unless a poll is demanded thereon.

(3) In the case of an equality of votes the person presiding at the meeting shall have a second or a casting vote.

(4) A poll may be demanded, before the conclusion of a parish meeting, on any question arising thereat:

Provided that a poll shall not be taken unless either the person presiding at the meeting consents, or the poll is demanded by not less than five, or one-third, of the local government electors present at the meeting, whichever is the less.

(5) A poll consequent on a parish meeting shall be taken by ballot in accordance with rules made by the Secretary of State under Section 54 of this Act, and the provisions of that section shall, subject to any adaptations made by those rules, apply in the case of a poll so taken as if it were a poll for the election of parish councillors.

[See The Parish Meeting (Polls) Rules, 1950, S.I. No. 984 of 1950, as amended by The Parish Meetings (Polls) (No. 2) Rules, 1950, S.I. No. 1272 of 1950.]

6.—(1) *Minutes.*—Minutes of the proceedings of a parish meeting, or of a committee thereof, shall be drawn up and entered in a book provided for that purpose, and

shall be signed at the same or the next ensuing assembly of the parish meeting, or meeting of the committee, as the case may be, by the person presiding thereat, and any minute purporting to be so signed shall be received in evidence without further proof.

(2) Until the contrary is proved, a parish meeting, or meeting of a committee thereof, in respect of the proceedings whereof a minute has been so made and signed shall be deemed to have been duly convened and held, and all the persons present at the meeting shall be deemed to have been duly qualified, and where the proceedings are proceedings of a committee, the committee shall be deemed to have been duly constituted and to have had power to deal with the matters referred to in the minutes.

7.—(1) *Standing orders.*—Subject to the provisions of this Act, a parish council may make, vary, and revoke standing orders for the regulation of the proceedings and business at parish meetings for the parish.

(2) In a rural parish not having a separate parish council the parish meeting may, subject to the provisions of this Act, regulate their own proceedings and business.

The county council may in certain circumstances by order divide a parish into separate parish wards (Section 52) and in that case the provisions of the Act in respect to parish meetings apply to parish meetings of a parish ward as if the parish ward were a whole parish (Section 78).

(2) PARISH COUNCILS

A parish council consists of the chairman and parish councillors and is a body corporate by the name of the parish council with the addition of the name of the particular parish.

The number of parish councillors is to be such number not less than five nor more than fifteen as the county council may fix, and they hold office for three years (Section 50). They are elected by ballot in the same way as other councillors.

The election must be held in accordance with rules made by the Home Secretary (Section 54). See Parish Council Election Rules, 1949, S.I. No. 284 of 1949.

The Local Government Act, 1948, Part VI as amended by the Local Government (Miscellaneous Provision) Act, 1953, Section 16, provides for travelling and subsistence allowances, as well as limited compensation for loss of earnings for members of all local authorities.

S. 49.—(1) *Chairman and vice-chairman of parish council.*—The chairman of a parish council shall be elected annually by the council from among the councillors or persons qualified to be councillors of the parish.

(2) The election of the chairman shall be the first business transacted at the annual meeting of the council.

(3) The chairman shall, unless he resigns or ceases to be qualified or becomes disqualified, continue in office until his successor is elected.

(4) During his term of office the chairman shall continue to be a member of the council, notwithstanding the provisions of this Act relating to the retirement of parish councillors at the end of three years.

(5) The parish council may appoint a member of the council to be vice-chairman of the council.

(6) The vice-chairman shall, unless he resigns or ceases to be qualified or becomes disqualified, hold office until immediately after the election of a chairman at the next annual meeting of the council and during that time shall continue to be a member of the council, notwithstanding the provisions of this Act relating to the retirement of parish councillors at the end of three years.

(7) Subject to any standing orders made by the parish council, anything authorised or required to be done by, to or before the chairman may be done by, to or before the vice-chairman.

Part IV of the Third Schedule to the Act contains the provisions applicable to parish council meetings, and is as follows:

PART IV

1.—(1) *Days of meetings.*—A parish council shall in every year hold an annual meeting and at least three other meetings.

(2) The annual meeting of a parish council shall be held on or within fourteen days after the twentieth day of May in every year.

(3) The first meeting of a parish council constituted after the commencement of this Act shall be convened by the chairman of the parish meeting at which the first parish councillors are nominated.

(4) A meeting of a parish council shall be open to the public, unless the council otherwise direct.

(5) A meeting of a parish council shall not be held in premises licensed for the sale of intoxicating liquor, except in cases where no other suitable room is available for such meeting, either free of charge or at a reasonable cost.

2.—(1) *Convening meetings.*—The chairman of a parish council may call a meeting of the council at any time.

(2) If the chairman refuses to call a meeting of the council after a requisition for that purpose, signed by two members of the council, has been presented to him, or if, without so refusing, the chairman does not call a meeting within seven days after such requisition has been presented to him any two members of the council, on that refusal or on the expiration of those seven days, as the case may be, may forthwith convene a meeting of the council.

(3) Three clear days at least before a meeting of a parish council:

(*a*) notice of the time and place of the intended meeting shall be affixed in some conspicuous place in the parish, and where the meeting is called by members of the council the notice shall be signed by those members and shall specify the business proposed to be transacted thereat;

(*b*) a summons to attend the meeting specifying the business proposed to be transacted thereat and

signed by the clerk of the council shall be left at or sent by post to the usual place of residence of every member of the council:

Provided that want of service of the summons on any member of the council shall not affect the validity of a meeting.

3.—(1) *Chairman of meeting.*—At a meeting of a parish council, the chairman of the council, if present, shall preside.

(2) If the chairman of the council is absent from a meeting of the council, the vice-chairman of the council, if present, shall preside.

(3) If both the chairman and vice-chairman of the council are absent from a meeting of the council, such councillor as the members of the council present shall choose shall preside.

4. *Quorum.*—Subject to the provisions of Part V of this Schedule, no business shall be transacted at a meeting of a parish council unless at least one-third of the whole number of members of the council are present thereat:

Provided that in no case shall the quorum be less than three members.

5. *Mode of voting.*—The mode of voting at meetings of a parish council shall be by show of hands, and on the requisition of any member of the council the voting on any question shall be recorded so as to show whether each member present and voting gave his vote for or against that question.

[The record of voting can be conveniently made in the minutes of proceedings in connection with the particular business transacted.]

The provisions of Part V (*ante*, p. 204) of the Third Schedule also apply to these meetings.

DECLARATION OF ACCEPTANCE OF OFFICE

No person elected to any of the offices on any of these local authorities may act unless he has made a declaration of acceptance of office (Section 61).

CASUAL VACANCIES IN OFFICE OF CHAIRMAN OR MAYOR

When a casual vacancy occurs in the office of chairman of a county council, or county alderman, or of mayor or alderman of a borough, or of chairman of a district or parish council, an election to fill the vacancy must be held not later than the next ordinary meeting of the council, or if that is within fourteen days after the occurrence of the vacancy at the next meeting after that of the council (Section 66).

Where a rural parish has no separate parish council a casual vacancy in the office of chairman of the parish meeting shall be filled by a meeting of the parish meeting which is to be called forthwith for the purpose (Section 66 (3)).

CHAPTER 23

LONDON

(1) LONDON COUNTY COUNCIL

THE administrative County of London consists of the City, the Metropolitan boroughs, and the Inner and Middle Temple (London Government Act, 1939, Section 1), and the constitution and proceedings of local authorities in that area are chiefly governed by that Act. Reference in this chapter to sections will be to sections of that Act. The authority for the county is the London County Council, which consists of the chairman, county aldermen, and county councillors, and is a body corporate (Section 2).

The Local Government Act, 1948, Part VI, as amended by the Local Government (Miscellaneous Provisions) Act, 1953, Section 16, provides for travelling, and subsistence allowances, as well as limited compensation for loss of earnings for members of all local authorities.

The provisions of Parts I and III of the Third Schedule to the Act govern the meetings and proceedings of the county council. The provisions of Part I are as follows:

PART I

1.—(1) The county council shall in every year hold an annual meeting and such other meetings as it considers necessary for the transaction of its business.

(2) The annual meeting shall be held:

(*a*) in a year which is the year of election of county councillors, on the twelfth day after such election, or such other day within twenty-five days after such election as the council may determine;

(*b*) in any other year, on such day in the month of

March, April, or May as the council may determine; and at such hour as the council may determine.

(3) The other meetings shall be held on such other days and at such hour as the council may determine.

(4) Meetings of the county council shall be held at such place, either within or without the county, as the council may determine.

2.—(1) The chairman of the county council may call a meeting of the council at any time.

(2) If the chairman refuses to call a meeting of the council after a requisition for that purpose, signed by twenty members of the council, has been presented to him, or if, without so refusing, he does not within seven days after the requisition has been presented to him call a meeting, any twenty members of the council may forthwith on his so refusing or on the expiration of the seven days, as the case may be, call a meeting of the council.

(3) Forty-eight hours at least before a meeting of the county council:

(*a*) notice of the time and place of the intended meeting, signed by the chairman of the council or by the members calling the meeting, shall be published at the county hall, and where the meeting is called by the members of the council the notice shall specify the business proposed to be transacted thereat; and

(*b*) a summons to attend the meeting, specifying the business proposed to be transacted thereat and signed by the clerk of the county council, shall be left at, or sent by post to, the last-known place of residence of every member of the council;

Provided that:

(i) want of service of the summons on any member of the council shall not affect the validity of a meeting; and

(ii) if a member of the council gives notice in writing to the clerk of the council that he desires summonses to attend meetings of the council to

be sent to him at some address (to be specified in the notice) other than his place of residence, any summons addressed to him and delivered at or sent by post to the address so specified shall be deemed sufficient service of the summons.

(4) Except in the case of business required by this Act to be transacted at the annual meeting of the county council, or except in the case of a matter of urgency brought before the meeting in accordance with any standing order made by the council, no business shall be transacted at a meeting of the council other than that specified in the summons relating thereto.

3.—(1) At a meeting of the county council the chairman of the council, if present, shall preside.

(2) If the chairman of the council is absent from a meeting of the council, the vice-chairman or, in his absence, the deputy chairman (if any) of the council, if present, shall preside.

(3) If the chairman, vice-chairman, and deputy chairman (if any) are all absent from a meeting of the council, such member of the council as the members present shall choose shall preside.

4. No business shall be transacted at a meeting of the county council unless at least one-fourth of the whole number of members of the council are present thereat:

Provided that, where more than one-third of the members of the council become disqualified at the same time, the foregoing provision shall, until the number of members in office is increased to not less than two-thirds of the whole number of members of the council, have effect as if for the reference to the whole number of members of the council there were substituted a reference to the number of members of the council remaining qualified.

The provisions of Part III of the Third Schedule to the Act, which also apply to meetings of the metropolitan borough councils, are as follows:

PART III

1.—(1) Subject to the provisions of any enactment (including any enactment in this Act), all acts of a local authority, and all questions coming or arising before a local authority, shall be done and decided by a majority of the members of the authority present and voting thereon at a meeting of the authority.

(2) In the case of an equality of votes, the person presiding at the meeting, whether or not he voted, or was entitled to vote, in the first instance, may give a casting vote.

2. The names of the members present at a meeting of a local authority shall be recorded.

3.—(1) Minutes of the proceedings of a meeting of a local authority shall be drawn up and printed, and shall be signed at the same or next ensuing meeting of the authority by the person presiding thereat, and any minute purporting to be so signed shall be received in evidence without further proof.

(2) Until the contrary is proved, a meeting of a local authority in respect of the proceedings of which a minute has been so signed shall be deemed to have been duly convened and held, and all the members present at the meeting shall be deemed to have been duly qualified.

[By Section 173, the minutes of proceedings of a local authority are to be open to the inspection of any local government elector for its area on payment of a fee not exceeding one shilling, and any such local government elector may make a copy thereof or an extract therefrom.]

4. Subject to the provisions of this Act, a local authority may make standing orders for the regulation of its proceedings and business, and may vary or revoke any such orders.

5. The proceedings of a local authority shall not be invalidated by any vacancy among its number, or by any defect in the election or qualification of any of its members.

(2) METROPOLITAN BOROUGH COUNCILS

The London Government Act, 1939, also provides that for every metropolitan borough there shall be a metropolitan borough council consisting of the mayor, aldermen, and councillors, and that it shall be a body corporate. Meetings of a borough council are governed by the provisions contained in Parts II and III of the Third Schedule to the Act. Part III is set out above, the provisions of Part II are as follows:

PART II

1.—(1) A borough council shall in every year hold an annual meeting and such other meetings as it considers necessary for the transaction of its business.

(2) The annual meeting shall be held on the eleventh day after the election of borough councillors or such other day within the following seven days as the borough council may fix at such hour as the council may determine.

(3) The other meetings shall be held on such other days and at such hour as the council may determine.

2.—(1) The mayor of a borough may call a meeting of the borough council at any time.

(2) If the mayor refuses to call a meeting after a requisition for that purpose, signed by one-fourth of the whole number of members of the council, has been presented to him, or if, without so refusing, the mayor does not within seven days after the requisition has been presented to him call a meeting, any members of the council, not being less than one-fourth of the whole number thereof, may forthwith on his so refusing, or on the expiration of those seven days, as the case may be, call a meeting of the council.

(3) Three clear days at least before a meeting of a borough council:

(*a*) notice of the time and place of the intended meeting shall be published at the offices of the council, and where the meeting is called by members of

the council the notice shall be signed by those members and shall specify the business proposed to be transacted thereat; and

(*b*) a summons to attend the meeting, specifying the business proposed to be transacted thereat, and signed by the town clerk, shall be left at, or sent by post to, the last-known place of residence of every member of the council:

Provided that want of service of the summons on any member of the council shall not affect the validity of a meeting.

(4) Except in the case of business required by this Act to be transacted at the annual meeting of a borough council, no business shall be transacted at a meeting of the council other than that specified in the summons relating thereto.

3.—(1) At a meeting of a borough council the mayor of the borough, if present, shall preside.

(2) If the mayor is absent from a meeting of the borough council, the deputy mayor, if present, shall preside.

(3) If both the mayor and the deputy mayor are absent, such alderman, or in the absence of all the aldermen, such councillor, as the members of the council present shall choose, shall preside.

4. No business shall be transacted at a meeting of a borough council unless at least one-third of the whole number of members of the council are present thereat:

Provided that, where more than one-third of the members of the council become disqualified at the same time, the foregoing provision shall, until the number of members in office is increased to not less than two-thirds of the whole number of members of the council, have effect as if for the reference to the whole number of members of the council there were subsituted a reference to the number of members of the council remaining qualified.

The Act contains provisions preventing a member of the county council or of a borough council voting on a matter in which he is interested (Sections 51 and 52).

The Local Government Act, 1948, Part VI, as amended by the Local Government (Miscellaneous Provisions) Act, 1953, Section 16, provides for travelling and subsistence allowances, as well as limited compensation for loss of earnings for members of all local authorities.

(3) COMMITTEES

The county council and the metropolitan borough councils, are empowered to appoint committees, and the provisions relating to committees are contained in Part III of the Act.

The appointing authority may, subject to the provisions of any enactment, make, vary and revoke standing orders dealing among other things with the place of meeting, quorum, and proceedings of any committee set up by it, and if no such standing orders are made to deal with these matters they may be regulated in such manner as the committee determines (Section 68).

The person presiding at any committee meeting is to have a casting vote (Section 69 (1)) and the minutes of every committee meeting are to be drawn up and to be signed by the person presiding at that or a subsequent meeting of the committee. When so signed they are to be received in evidence without further proof (Section 69 (2)).

(4) THE CORPORATION OF THE CITY OF LONDON

The citizens and freemen of the City of London form a body corporate, by the name of the Mayor and Commonalty and Citizens of the City of London, with a common seal known as the common seal of the City of London. It discharges its functions through three assemblies, *viz.* the Common Hall, the Court of Aldermen, the Court of Common Council.

The chief officer of the City is the Mayor, and he is styled "Lord Mayor," the earliest instance of his being so called in English being in 1486. He is entitled to be styled the "Right Honourable," as is the Lord Mayor

of York and the Chairman of the London County Council. At the election of Lord Mayor on the 29th of September in each year the liverymen of the City, in Common Hall assembled, nominate two aldermen who have filled the office of sheriff, from whom the Court of Aldermen finally select one for the office.

The Lord Mayor presides over all the corporation assemblies, none of which can be held except by his consent and direction, and the business whereof is subject to his control.

An alderman who has held the office of Lord Mayor can act as his deputy if appointed by the Lord Mayor under seal for that purpose for any particular occasion.

In case of the death of the Lord Mayor during his term of office, it is the custom to suspend all important business pending the appointment of his successor; in the meantime the senior alderman acts as deputy.

The Court of Aldermen

Each of the 26 city wards elects an alderman who holds office during good behaviour but may be removed for just and reasonable cause, and, *inter alia*, on bankruptcy or insolvency, absence for more than six consecutive months without reasonable cause, conviction of fraud and crime.

Unlike those of other corporations, the aldermen form a second chamber and sit apart as well as sitting in the court of the common council.

The Court sits in public and the Lord Mayor presides, 13 forming a quorum. There are four standing committees, each consisting of the whole Court, *viz.* privileges, gaols, general purposes, and finance, the proceedings of which are regulated by Standing Orders. The chairmen of these committees are appointed at the commencement of each mayoralty.

This Court, *inter alia*, appoints the recorder, exercises jurisdiction over the livery companies, and regulates the City police.

To an alderman is entrusted the rule and government

of his ward; he usually appoints a deputy from among the common councilmen, called the deputy.

All the aldermen are justices of the peace, and are justices of oyer and terminer, and, as such, are named in the commission for holding the sessions at the Central Criminal Court.

The Court of Common Council

This Court consists of the Lord Mayor and aldermen and also 206 common councilmen, elected annually on St. Thomas's Day, 21st December, and is called the "Court of the Mayor, Aldermen, and Commons of the City of London in Common Council Assembled." The Lord Mayor presides, and meetings are called at his discretion, but seven members can require him to call a court at any time. The quorum is forty, one of whom must be the Lord Mayor or his *locum tenens*, and two at least must be aldermen. Proceedings are governed by standing orders.

This Court appoints the corporation officers, other than those appointed by the Crown, the Court of Aldermen, and the Livery, and exercises all municipal functions.

Its powers and duties include, *inter alia*, control of public markets in the county of London, bridges in the City of London, and landed property of the corporation. The corporation is the port sanitary authority for the Port of London.

The common seal granted by Henry III can only be affixed in open court after a formal resolution by the Court of Common Council.

The Common Hall

The Common Hall consists of the Lord Mayor, at least four aldermen, the sheriffs, and such of the liverymen as are freemen of the City of London, and is styled "the Meeting or Assembly of the Mayor, Aldermen, and Liverymen of the several companies of the City of London in Common Hall Assembled."

It meets twice a year, on Midsummer and Michaelmas day, and, *inter alia*, nominates two aldermen for the mayoralty, elects the sheriffs, the chamberlain, the auditors and bridge masters. The elections are by show of hands, and if a poll is demanded it is held in the same way as a poll for the election of common councilmen, *i.e.* by ballot (City of London Ballot Act, 1887).

APPENDICES

LOCAL AUTHORITIES (ADMISSION OF THE PRESS TO MEETINGS) ACT, 1908

[8 EDW. VII, CH. 43]

An Act to provide for the Admission of Representatives of the Press to the Meetings of certain Local Authorities.

[21st December, 1908.

(1) Representatives of the Press shall be admitted to the meetings of every local authority: Provided that a local authority may temporarily exclude such representatives from a meeting as often as may be desirable at any meeting when, in the opinion of a majority of the members of the local authority present at such meeting, expressed by resolution, in view of the special nature of the business then being dealt with or about to be dealt with, such exclusion is advisable in the public interest.

(2) For the purposes of this Act the expression "local authority" means:

(*a*) A council of a county, county borough, borough (including a metropolitan borough), urban district, rural district, or parish, and a joint committee or joint board of any two or more such councils to which any of the powers or duties of the appointing councils may have been transferred or delegated under the provisions of any Act of Parliament or Provisional Order; and a parish meeting under the provisions of the Local Government Act, 1894;

(*b*) An education committee and a joint education committee, established under Section 17 of the Education Act, 1902, so far as respects any acts or proceedings which are not required to be submitted to the council or councils for its or their approval;

(*c*) A board of guardians, and a joint committee constituted in pursuance of Section 8 of the Poor Law Act, 1879, and the board of management of any school or asylum district formed under any of the Acts relating to the relief of the poor;

[Sect. 8 of the Act of 1879 was repealed by the Poor Law Act, 1927.]

(*d*) A central body and a distress committee under the Unemployed Workmen Act, 1905;

[The Act of 1905 was repealed by the Local Government Act, 1929, s. 12.]

(*e*) The Metropolitan Water Board and a joint water board constituted under the provisions of any Act of Parliament or Provisional Order;

(*f*) Any other local body which has, or may hereafter have, the power to make a rate.

The expression "rate" means a rate the proceeds of which are applicable to public local purposes, and leviable on the basis of an assessment in respect of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other document requiring payment from some authority or officer, is or can be ultimately raised out of a rate.

The expression "representatives of the Press" means duly accredited representatives of newspapers and duly accredited representatives of news agencies which systematically carry on the business of selling and supplying reports and information to newspapers.

(3) This Act shall not extend to any meeting of a committee of a local authority, as defined for the purposes of this Act, unless the committee is itself such an authority.

(4) Nothing in this Act shall be construed so as to prohibit a committee of a local authority from admitting representatives of the press to its meetings.

(5) Nothing in this Act shall be construed so as to prohibit a local authority from admitting the public to its meetings.

(6) In the application of this Act to Scotland:

1. The expression "local authority" means:
   - (*a*) A county council, a town council, a parish council, a school board, and a district committee constituted under the Local Government (Scotland) Acts;
   - (*b*) A central body, and a distress committee under the Unemployed Workmen Act, 1905;
   - (*c*) Any other local body, board, joint board, or committee which has or may hereafter have the power to impose a rate as defined in Section 2 of this Act and which does not require to report its proceedings to any other local authority.
2. The definition of the expression "local authority" in Section 2 of this Act, shall not apply to Scotland.

(7) 1. This Act may be cited as "The Local Authorities (Admission of the Press to Meetings) Act, 1908."

2. This Act shall not extend to Ireland.

APPENDIX 2

FREE SPEECH AND BLASPHEMY*

THE law affecting blasphemy may be shortly stated as follows: "The common law of England, which is only common reason or usage, knows of no prosecution for mere opinions" (Evans *v.* Chamberlain of London, 1762, 2 Burns Ecc. Law, 217). Blasphemy is made an offence because it may bring about a breach of the peace (R. *v.* Boulter, *post*, p. 241), and consists of scurrilous and irreverent ridicule, or impugning the Christian religion in such a way as to outrage the feelings of any sympathiser with Christianity (R. *v.* Gott, *post*, p. 242). Ridicule and sarcasm are legitimate weapons, but not scurrility, offensive levity or abuse.

If the decencies of controversy are observed, even fundamentals of religion may be attacked without a person being guilty of blasphemous libel. The mere denial of the truth of Christianity is not blasphemy (R. *v.* Ramsey and Foote, *post*, p. 240).

Mr. Justice Fitzjames Stephen in 1882 wrote: "To say that the crime of blasphemy lies in the manner and not in the matter appears to me to be an attempt to evade or explain away a law which has no doubt ceased to be in harmony with the temper of the times. It is unquestionably true that in the course of the last thirty—but especially in the course of the last twenty—years open avowals of disbelief in the truth of both natural and revealed religion have become so common that they have ceased to attract attention. I do not think any one has been convicted of blasphemy in modern times for a mere decent expression of disbelief in Christianity."—*Law Times*, 29th November, 1913.

In R. *v.* Tunbridge (1822, 1 St. Tr., N. S., pp. 1369-70) it was held that justification of a blasphemy cannot be pleaded, nor may a defence be a vehicle for the very crime for which a defendant is charged. And in R. *v.* Williams (1797, 26 Howell, St. Tr., at p. 716) "offences of this kind (*i.e.* blasphemy) are . . . crimes against the law of the land, inasmuch as they tend to destroy those obligations whereby civil society is bound together; and it is upon this ground that the Christian religion constitutes part of the law of England."

"I have no doubt, therefore, that the mere denial of the truth of Christianity is not enough to constitute the offence of blasphemy. It is my duty to lay down the law on the subject as I find it laid down in the best books of authority, and in *Starkie on Libel* (599, 4th edition) it is there laid down as, I believe, correctly: 'There

* A Bill was introduced by the title "The Blasphemy Laws (Amendment) Bill, 1926" on 22nd February, 1926, which sought to provide that no criminal proceedings should be instituted in any Court against any person for schism, heresy, blasphemy, blasphemous libel, or atheism. The Bill was read a second time but was subsequently dropped.

are no questions of more intense and awful interest than those which concern the relations between the Creator and the beings of His creation; and though, as a matter of discretion and prudence, it might be better to leave the discussion of such matters to those who, from their education and habits, are most likely to form correct conclusions, yet it cannot be doubted that any man has a right not merely to judge for himself on such subjects, but also, legally speaking, to publish his opinion for the benefit of others. When learned and acute men enter upon these discussions with such laudable motives their very controversies, even where one of the antagonists must necessarily be mistaken, must in general tend to the advancement of truth, and the establishment of religion on the firmest and most stable foundation. The very absurdity and folly of an ignorant man who professes to teach and enlighten the rest of mankind are usually so gross as to render his errors harmless; but, be this as it may, the law interferes not with his blunders, so long as they are honest ones, justly considering that society is more than compensated for the partial and limited mischief which may arise from the mistaken endeavours of honest ignorance, by the splendid advantages which result to religion and truth from the exertions of free and unfettered minds. It is the mischievous abuse of this state of intellectual liberty which calls for penal censure. The law visits not the honest errors, but the malice of mankind. A wilful intention to pervert, insult, and mislead others by means of licentious and contumelious abuse applied to sacred objects, or by wilful misrepresentations or wilful sophistry, calculated to mislead the ignorant and unwary, is the criterion and test of guilt. A malicious and mischievous intention, or what is equivalent to such an intention in law as well as morals—a state of apathy and indifference to the interests of society—is the broad boundary between right and wrong.' . . . If the decencies of controversy are observed, even the fundamentals of religion may be attacked without the writer being guilty of blasphemy" (R. *v.* Ramsey and Foote, 1883, 15 Cox C. C., p. 236).

"A man was free to think, to say, and to teach that which he pleased about religious matters, though not about morals. But when they came to consider whether he had exceeded the permitted limits they must not forget the place where he spoke and the people to whom he spoke. A man was not free in a public place, where passers-by, who did not go willingly to listen to him, knowing what he was going to say, should accidentally hear his words; or where young people might be present, a man was not free in such a place to use coarse ridicule on subjects which were sacred to the great majority of persons in this country. He was free to put forward arguments. The jury must draw the line, and probably would draw it in favour of the man accused if he was really arguing for an honest belief in a doctrine or non-doctrine to which he was attached, and he would not be convicted of blasphemous libel; but if not for argument, he was making a coarse and scurrilous attack on doctrines which the majority of people held to be true, in a public place, where passers-by might have their ears offended, and where young people might come, he would render himself amenable to the law of blasphemous libel.

Such language might also tend to provoke a breach of the peace" (R. *v.* Boulter, *Times*, 7th February, 1908; see also 72 J. P. 189).

R. *v.* Stewart (Leeds Assizes, 5th December, 1911) followed the two foregoing cases, and in the summing up to the jury it was stated that the law of blasphemy had altered considerably of recent years. People were now allowed entire freedom of thought and expression so long as the expression was given vent to in what might be termed a decent way. It must not, however, be an abusive, malicious attack upon things which were sacred to a large majority of the people, delivered in a public place where such people would be passing. They must not be thin-skinned, because they must recollect that people might have, perfectly honestly, vulgar ideas and a very vulgar way of expressing themselves. They might also be addressing vulgar people, and they might want to put it into a langugae which would be understood by such people. They had nothing whatever to do with the question of whether it was wise or not to prosecute for blasphemy.

In R. *v.* Stewart (Staffordshire Assizes, 17th and 18th November, 1913) it was said in the course of the summing up to the jury, that the difficulty in cases of that kind is that all ancient precedents have, to a large extent, been abrogated by the course of time. There have been prosecutions for blasphemy in the old days which we in our day should recognise as infractions of the liberty of speech. But we have got wiser, larger minded, and more tolerant as the ages have rolled on, and our view nowadays is inclined to the opinion that free discussion will elicit the truth, and that anything that cannot stand free discussion is not worth protecting by law from such free discussion. It was a curious thing that one might attack any other religion, such as Mohammedanism or Judaism, in the most blasphemous language, and the law would hold one harmless, but in regard to Christianity the law was different. Even now, however, one might in speech or in writing attack the very fundamentals of the Christian faith without by so doing offending against any Christian law. The honest expression of opinion cannot now be touched by the criminal law. There is nothing sacred from honest discussion—Christianity, the Monarchy, sexual relations—everything may be openly discussed and without crime if you keep within the limits of what is not blasphemous and indecent. There was only one limit to this absolute freedom of discussion of the fundamentals of Christianity, and it was this: the religious feelings of all classes must be protected against outrage and insult. A man might suffer from almost insane vanity and from almost incurable vulgarity, but if he sets out to criticise with the honest intention of arriving at the truth he is not to be condemned merely because his language is that of a vain-glorious person and coarse and vulgar. The test is, Was it language used in honest discussion; although coarse and vulgar, was it used in honest discussion of the fundamentals of Christianity, or was it used to outrage and insult and ridicule the feelings of others—to scandalise, and not to prove false the doctrine he was discussing? There was a great difference between impugning the truths and doctrines of a religion and offending by coarse mockery the feelings of those who upheld those doctrines.

In R. *v.* Gott (Birmingham Assizes, 11th and 14th July, 1917) it was said that nobody nowadays wanted to limit the freedom of

belief, and a man was free to express in words and teach his belief so long as he did so decently and not in a way intended to shock or insult believers.

In R. *v.* Gott (1922, 16 Cr. App. Cas. 87) it was held that the offence of blasphemy may be committed by written as well as spoken words. The essence of the crime consisted in the publication of words concerning the Christian religion so scurrilous and offensive as to pass the limits of decent controversy, and to be calculated to outrage the feelings of any sympathiser with Christianity. In considering whether these limits have been passed, the circumstances in which the words were published should be taken into account. The limits of decent controversy would certainly be passed if the circumstances in which the words were published were such that the publication was likely to lead to a breach of the peace.

A society was registered as a company limited by guarantee. The main object of the company, as stated in its memorandum of association, was to "promote the principle that human conduct should be based upon natural knowledge, and not upon supernatural belief, and that human welfare in this world is the proper end of all thought and action." It was held, assuming that this object involved a denial of Christianity, (1) that it was not criminal, inasmuch as the propagation of anti-Christian doctrines, apart from scurrility or profanity, did not constitute the offence of blasphemy; and (2) that it was not illegal in the sense of rendering the company incapable in law of acquiring property by gift, and that a bequest "upon trust for the Secular Society Limited" was valid (Bowman *v.* Secular Society, 1917, A.C. 406). "The authorities are sufficient to establish that the first object of the society's memorandum is not open to objection as contrary to the policy of the law. It is not illegal, for it does not involve blasphemy. It is not irreligious, for it is at any rate consistent with that negative deism which was held not to be irreligious in Pare *v.* Clegg (1861, 29 Beav. 589). It is not immoral or seditious. It is, no doubt, anti-Christian, but . . . there is nothing unlawful at common law in reverently doubting or denying doctrines parcel of Christianity, however fundamental. It would be difficult to draw a line in such matters according to perfect orthodoxy, or to define how far one might depart from it in believing or teaching without offending the law. The only safe, and, as it seems to me, practical rule is that which depends on the sobriety and reverence and seriousness with which the teaching or believing, however erroneous, is maintained" (*ibid.*, p. 452).

APPENDIX 3

FORMS OF NOTICES OF MEETINGS OF COMPANIES, AGENDA PAPERS, AND MINUTES

(1) Notices of board meetings

CLAUSE 98 of Table A, and the Articles of most companies, provide that "the directors may meet together for the dispatch of business, adjourn, and *otherwise regulate their meetings as they think fit.*"

This leaves it, of course, open to the directors to instruct the secretary from time to time as to their wishes in the matter of notices; or to *Resolve*—as is often done—that meetings of the board are to be held at regular intervals, "of which no notice shall be given."

Apart from such special instructions, the usual practice is to send a simple notice in the following form without specifying the business to be transacted:

JOHN JONES & COMPANY, LIMITED.
370 Lombard Street, E.C.,
10th December, 19—.

Sir,

I beg to give you notice that a meeting of the directors will be held at the registered office of the company on next, the day of , at a.m.

ANDREW ARMSTRONG,
Secretary.

, Esq.

If the directors have given instructions that when any special business is to be brought up for consideration, a brief intimation of its nature is to be included in the notice, an addendum to the foregoing would take this form:

"Business to be transacted:

"General business, and the proposed purchase of further premises in Street, N.E."

(2) Agenda of board meeting

Held on , 19 , at the company's registered office.

AGENDA	CHAIRMAN'S NOTES
Present	*A. B. in the chair.* *C. D.* *E. F.* *G. H.* *directors.*
In attendance	*M. N., solicitor of the company.*
Read Minutes of last meeting	*Read and signed.*
Submit Bank Pass Book, with adjustment account to agree same with cash book .. And statement of ways and means.	*Examined, and secretary instructed to request bank to transfer £500 from deposit to current account.*
Report Cheques (if any) signed since last meeting	*Approved.*
Produce List of Accounts for payment, and submit cheques in payment of same for signature	*All except P. T.'s account approved and cheques signed.* *Secretary to write to P. T. respecting shortage of delivery.*
Submit Transfer Deeds, Nos. to ..	*Passed for registration. Certificates ordered to be signed and sealed.*
Seal Certificates Nos. to , in place of Certificates Nos. cancelled ..	*Cancelled certificates examined. New certificates signed and sealed.*
Allot 1000 Ordinary Shares applied for by the following: 700 to of 300 to of	*Allotted, and secretary ordered to send notice of allotment forthwith.*

[The foregoing and any kindred formal matters are generally disposed of *first*, so as to leave time for any special matters to be discussed fully and without interruption.]

Consider Report of Managing Director [*or* of committee, *or* sub-committee, *as the case may be*]	*Proposed engagement of Mr. L. K. at a salary of £200 per annum, and the erection of a new storage shed as recommended. Approved.*
Examine Trading Account and cost and work details ..	*Examined: Reduction in cost of 2 per cent. noted.*
Read Letter from A.Z. dated ..... 19 .	*Secretary instructed to reply that* .. ..

AGENDA—*continued*	CHAIRMAN'S NOTES
Consider Draft Report to be submitted to general meeting.	*Approved. Secretary instructed to have this printed and sent with notice of general meeting for the inst., at 3 p.m*
Fix date of general meeting ..	
Next meeting	*inst., at 11 a.m.*

[It is, of course, impossible to enumerate the many special questions that may arise for consideration; but in constructing agenda it is, as stated above, the approved plan to arrange for taking the formal business first, and routine correspondence is generally considered after the signing of the minutes.]

(3) Minutes of board meeting

The "notes" of the chairman appended to the foregoing agenda will, when recorded in minutes, appear in the following form:

At a meeting of the board of directors of THE COMPANY, LIMITED, held at the registered offices of the company on the day of , 19 .

Present: Mr. A. B. in the chair.
,, C. D.
,, E. F.
,, G. H. directors.

And in attendance on the board:

Mr. M. N., the company's solicitor.

(1) *Minutes.*—The minutes for the board meeting held on ult., were read and verified, and ordered to be signed.

(2) *Finance.*—The bank pass book was compared with the cash book, showing, with adjustments, available cash balance of £ .

A further statement of ways and means was produced showing:

Accounts falling due and payable by the company within the next month, £	Falling due and payable to the company within the next month, £

The secretary was directed to request the bankers to transfer £500 from deposit account to current account.

Details of cheques drawn since last meeting were submitted and approved.

Lists of accounts due for payment, with their corresponding vouchers, were submitted, and cheques for all these, except the account of P. T. & Co., were signed.

The secretary was instructed to write to P. T. & Co. respecting an alleged shortage of delivery in their last consignment.

(3) *Transfers.*—Transfer deeds numbered to inclusive, as appearing in the transfer register, were submitted and passed by the board. It was resolved that the transferees be entered in the register of members and that certificates for the shares transferred be signed and sealed.

Share certificates, Nos. for shares, were thereupon *Cancelled* by the board and new certificates for shares, Nos. to , were signed and sealed.

Applications received from:

Mr. , of , for 700 Ordinary Shares

Mr. , of , ,, 300 ,, ,,

were submitted and approved, and it was *Resolved* that the shares applied for be allotted, and that the secretary be instructed to send to the applicants notice of allotment forthwith.

(4) *Report of managing director.*—The report of the managing director was read, and the engagement of Mr. L. K. at a salary of £200 per annum, and also the erection of a new storage shed at a cost not to exceed £ as recommended, were approved.

"Trading account" and "cost and work details" to date were examined, and a reduction of 2 per cent. in the cost of production noted by the board.

(5) *Correspondence.*—A letter dated , from A. Z., with reference to , was read, and the secretary was instructed to reply that .

(6) *Annual meeting.*—A draft notice convening the annual general meeting, together with a draft report of directors, were *Considered* and with some alterations approved, and ordered to be printed and sent to the shareholders, the date of the meeting being fixed for 3 p.m. on the *inst.*, at .

(7) *Next meeting.*—The next meeting of the board was fixed for the *inst.*, at 11 a.m., at the registered office, and the secretary was instructed to have proofs of the report and notice of general meeting ready for the use of the board by that date.

Chairman.
(*Date.*)

(4) Notice of statutory meeting*

370 Lombard Street, London, E.C.
, 19 .

THE COMPANY, LIMITED.

NOTICE IS HEREBY GIVEN that in accordance with the provisions of Section 130 of the Companies Act, 1948, the statutory meeting of this company will be held at on the day of 19 , at two o'clock in the afternoon.

A copy of the report required to be sent to the members by the above-named section accompanies this notice.

By order of the board,
ANDREW ARMSTRONG,
Secretary.

Dated this day of 19 .

* In this and the following forms of notice of a general meeting of a company having a share capital there must appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or where that is allowed, one or more proxies to attend and vote instead of him, and that a proxy need not also be a member (Companies Act, 1948, Section 136 (2)).

(5) Agenda of statutory meeting

[As the contents of the report to be presented to the shareholders fourteen days before the statutory meeting are fully set out in Section 130 of the Companies Act, 1948, and cover the whole ground, the agenda of such a meeting is very simple:]

THE COMPANY, LIMITED.
Statutory meeting, held at
on , 19 , at o'clock.

	CHAIRMAN'S NOTES
[*Read* notice convening the meeting] ..	*Read*
Ask the meeting whether the statutory report may be taken as read, or whether it shall be read	*Taken as read*
Chairman to direct the attention of the meeting to the fact that a list of the shareholders in the company is, in accordance with Section 130 of the Act, open to the inspection of members during the continuance of the meeting	*List produced and shown*
Chairman to make short statement of the company's position and prospects, supplementing to some extent the statutory report, and invite inquiries from members who do not understand any of the contents of the report	*Statement made*

[After the chairman has answered such questions to the best of his ability, the members are at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not; but no resolution of which notice has not been given in accordance with the articles may be passed; or the meeting may adjourn from time to time.

When such discussion has ceased, if no adjournment has been determined upon by the meeting, the chairman will declare the meeting closed.]

(6) Minutes of statutory meeting

Reproduced in minutes the foregoing will appear as follows:

At the statutory meeting of THE COMPANY, LIMITED, held at , on

Mr. in the chair

The notice convening the meeting was read; the statutory report being, with the consent of the meeting, taken as read.

The chairman directed the attention of the meeting to the fact that a list of the shareholders in the company was, in accordance with the provisions of the Act, placed on the table and would remain

open to the inspection of members during the continuance of the meeting.

The chairman then made a short statement on the company's position and prospects, supplementing to some extent the information contained in the statutory report, and invited inquiries from those members who had any difficulty in understanding the report.

After answering all the questions addressed to him, a discussion arose respecting the formation of the company, in which members A and B and C took part, on the conclusion of which—as there was no business to transact—the meeting closed, with a vote of thanks to the chairman.

Chairman.
(*Date.*)

(7) Notices of annual general meetings*

THE COMPANY, LIMITED.
Street, London, E.C.
19 .

NOTICE IS HEREBY GIVEN that the [second] annual general meeting of this company will be held at , on , the day of , 19 , at two o'clock in the afternoon, for the following purposes:

To receive and consider the report of the directors, the accounts and balance sheet, and the auditors' report thereon;

To declare dividends, to elect directors, and to transact the other ordinary business of the company.

Mr. W. retires from the Board by rotation but offers himself for re-election.

Notice is also hereby given that the transfer books of company will be closed from the to the , 193 , both days inclusive.

By order of the board,
Dated this day of 19 ,

....
Secretary.

When it is desired to transact any special business at an ordinary meeting the notice must also contain the words "And to transact the following special busines, *viz.*:"]

(8) Agenda for annual general meeting

THE COMPANY, LIMITED.
[Second] annual general meeting, to be held at
on 19 , at o'clock.

AGENDA	CHAIRMAN'S NOTES
[Read notice convening the meeting] ..	*Read*
Read report of auditors	*Read*

[The auditors' report *must be read* at the general meeting at which the balance sheet is submitted, and be open to inspection by any shareholder (Section 162 (2) of the Companies Act, 1948).]

* See footnote on page 246.

AGENDA—*continued*	CHAIRMAN'S NOTES
Ask the meeting whether the directors' report and the accounts as submitted and printed shall be read or taken as read	*Taken as read*
Chairman to make statement of the company's position and general prospects, and	*Statement made*
Move that the report and accounts as audited and certified, now before the meeting, be approved and adopted	*Moved*
Call on to second the motion	*Seconded by*
Ascertain whether the shareholders have any points to discuss or questions to ask, arising out of this motion	*Discussion and questions asked*
Reply to any questions	*Questions answered*
Put the motion to the meeting and declare the result	*Put and carried unanimously*
Elect a director in place of Mr. W., retiring by rotation	*Proposed by Mr. A.; seconded by Mr. B. Mr. W. re-elected*
Move that the dividends recommended by the directors in their report, *viz.* 6 per cent. on the preference shares and $7\frac{1}{2}$ per cent. on the ordinary shares, be approved and paid to shareholders appearing on the register of members at the closing of the books on *inst.*	*Seconded by Mr. C. Carried*
Invite a shareholder to move that the remuneration of Messrs. R. and Son, as auditors of the company for the current year, be £	*Moved by Mr. M.; seconded by Mr. N. Carried*
Declare proceedings at an end.	

(9) Minutes of annual general meeting

At the [second] annual general meeting of THE COMPANY LIMITED, held at on
Mr. in the chair.

(1) *Reports and accounts.*—The notice convening the meeting and the auditors' report were *Read.* The directors' report and accounts were, with the consent of the meeting, taken as read.

After the chairman had addressed the meeting and replied to all the questions addressed to him, it was, on the motion of the chairman

seconded by Mr. , unanimously *Resolved* "that the report and accounts to , 19 , as audited and certified by the company's auditors, be approved and adopted."

(2) *Directors.*—On the proposition of Mr. A., seconded by Mr. B., it was *Resolved* that Mr. W., the director retiring by rotation, be re-elected.

(3) *Dividend.*—It was then on the motion of the chairman, seconded by Mr. C., unanimously *Resolved* that the dividends recommended by the directors in their annual report, *viz.* 6 per cent. on the preference shares and 7½ per cent. on the ordinary shares, be approved, and that the dividends be paid to those members whose names appeared in the register of members at the date of closing the books on *inst.*

(4) *Auditors.*—It was proposed by Mr. M., seconded by Mr. N., and *Resolved* that the remuneration of Messrs. R. & SON, as the auditors of the company for the current year, be £ .*

The meeting then terminated with a vote of thanks to the board.

(Signed),

.....
Chairman.
(*Date.*)

(10) Notice of extraordinary general meeting†

.....LIMITED

NOTICE IS HEREBY GIVEN that an extraordinary general meeting of this company will be held at , on , the day of , 19 , at o'clock in the afternoon, when the subjoined resolution will be submitted as a [special] [extraordinary] [ordinary] resolution.

[Special] [Extraordinary] Resolution
[set out resolution]

By order of the board,

Dated this day of, 19

.....
Secretary.

(11) Agenda of extraordinary general meeting

THE COMPANY, LIMITED.
Extraordinary general meeting to be held at on 19 , at o'clock.

* The re-election of the retiring auditors is not essential. See, *ante* p. 127.
† See footnote on page 246.

AGENDA	CHAIRMAN'S NOTES
Chairman to make statement as to the circumstances which have arisen rendering it advisable for the company to pass the following resolution	*Statement made*
Move the resolution specified in the notice	*Moved*
Call on to second the motion ..	*Seconded by*
Reply to any questions that may be addressed to him respecting the matter	*Mr.* ..... *Questions replied to*
Put the resolution to the meeting [if appropriate as a special or extraordinary resolution] and declare result	*Passed*
Declare the meeting closed.	

(12) Minutes of extraordinary general meeting

At an extraordinary general meeting of THE COMPANY, LIMITED, held at on the day of 19 , at o'clock.

Mr. in the chair.

The following resolution was duly passed as a [special] [extraordinary] [ordinary] resolution:

The proceedings then terminated.

APPENDIX 4

EXAMINATION QUESTIONS

Corporation of Secretaries

Questions set in Intermediate and Final Examination, December 1955

1. The Directors are not satisfied with the work carried out by the Company's Auditors.
   How would a change be effected at the Annual General Meeting?
2. A General Meeting of a Company under Table "A" held on 1st July, 1955, was adjourned until the 1st August, 1955. What were the consequences of such an action and how are Proxy holders affected?
3. What are the Statutory Rights available to members of a company for requisitioning an extraordinary meeting of a company where the directors fail or refuse to convene the meeting?
4. Prepare Minutes of a meeting of directors dealing with the following:
   (*a*) Transmission of Shares into the names of the Executors of a deceased Shareholder.
5. What do you understand by the common law of meetings? How does it affect:
   (*a*) Quorum?
   (*b*) Adjournment?
   (*c*) Proxies?
6. Write short notes on the following:
   (*a*) Fair comment.
   (*b*) Privilege.
   (*c*) Justification.
7. What is the object of an amendment? Can a person who has proposed a motion move an amendment to it later on in the discussion?
8. If a chairman, in order to preserve order at a meeting, orders the removal of a Member for persistent disorder, what action for assault might lie?
   State the principles which should govern the Chairman's action.
9. A person in the street is so alarmed at a disturbance at a meeting that he requests a Police Officer to intervene. Discuss the situation as it is affected by the powers and duties of the Police:
   (*a*) At a meeting in a public place.
   (*b*) At a meeting on private premises.

10. The terms of a contract was agreed to at a Meeting at which a bare quorum was present. What would be the position if:
    (*a*) Before the agreement was reached a Member said he was in agreement but had to go, and left the Meeting?
    (*b*) One of those present had an interest in the Contract?
11. What are the main differences between "Minutes" and "Reports"? State the essential points to which you must give attention when drafting Resolutions.
12. Outline the general powers and duties of chairmen of local authority meetings.
13. What is the procedure necessary to alter the Objects of a Limited Company?
14. Discuss the Statutory Rights available for the preservation of order at public meetings held:
    (*a*) In an open space.
    (*b*) On private premises.
15. In a speech at a meeting, "A" makes a statement that "B" is dishonest. "B" brings an action for slander. Consider the question of "Privilege" as it may be relevant:
    (*a*) If the Meeting were a public one.
    (*b*) If it were a Shareholders' meeting.
    (*c*) If it were a Meeting of the local Council.
16. What are the normal rules for discussion and the order of debate?
17. Write notes on the following:
    (*a*) Previous Question.
    (*b*) The Closure.
    (*c*) Adjournment.
18. Draft a form of Proxy suitable for an Annual Meeting of:
    (*a*) A Limited Company
    OR
    (*b*) Your Social Club.
    Do you need to have regulations to allow the use of proxies?
19. (*a*) Brown, an Alderman of Blankshire County Council, has sent in his resignation to the Chairman of the County Council; the next day he is persuaded to change his mind and stay on the Council. What steps should he take, if any?
    (*b*) Set out the procedure necessary for an election to fill a casual vacancy on an Urban District Council.
20. Outline the provisions of the Defamation Act, 1952, concerning the defence of "Unintentional Defamation".
21. State and comment upon the essentials of a valid meeting.
22. Write notes on:
    (i) Motions and Resolutions.
    (ii) Amendments.
    (iii) Rules of Debate.

Selection of questions taken from Final Examination papers of the Chartered Institute of Secretaries, 1952-1955

1. As secretary of a company, what steps would you take to check the validity of the undermentioned documents deposited at

the registered office? Assuming they are in order, outline the office procedure necessary to give effect to each of them.
(*a*) A requisition requiring the directors to convene an extraordinary general meeting.
(*b*) A requisition requiring the company to circulate to members a statement with respect to a resolution to be proposed at a general meeting which the directors have convened.

2. Under the terms of a trust deed, the quorum at a meeting had to be the holders of a clear majority in value of the stock, of persons present in person or by proxy. The stockholders who were present at a meeting in person did not constitute the required quorum, but the chairman held proxies sufficient for that purpose. On a show of hands, he declared a motion carried unanimously, but had he demanded a poll, the votes of the proxies held by him would have defeated the motion. Was the chairman's action in declaring the motion carried correct? Discuss the situation with reference to any decided cases known to you.
3. What is a breach of the peace? What are the duties of the police relating thereto in the case of:
(*a*) Public meetings in public places?
(*b*) Public meetings in private premises?
(*c*) Private meetings in private premises?
4. Define an extraordinary resolution. Explain any characteristics known to you as to length of notice, amendment of, ascertainment of the majority required for, and the effect of the chairman's declaration of the result of voting on, such a resolution.
5. The articles of a company contained the usual provisions as to re-election of directors due to retire by rotation. At the annual general meeting a motion for the re-election of a director so retiring was defeated but no election of another director to fill the office vacated was made. Discuss the position.
6. Explain the provisions of Table "A" or of any regulation with which you may be familiar, as to the ascertainment of a quorum at a meeting of directors. Can an alternate director be included in a quorum at such a meeting?
7. Name any statutory or other provisions known to you relating to the appointment of a chairman:
(*a*) At a general meeting of a company.
(*b*) Of the board of directors.
Describe briefly the powers and duties devolving upon the office in so far as they relate to meetings in the two categories particularised.
8. Explain briefly the provisions as to meetings of the company and of creditors in a creditors' voluntary winding up.
9. Describe the various ways in which the sense of a meeting can be ascertained and the duties devolving upon the chairman in declaring the result of voting.
10. Write brief notes, with reference to decided cases, on service of

a notice. What consequences might arise in the case of a notice:
(*a*) Posted to an address vacated by the addressee?
(*b*) Withheld from a person who had advised the secretary that he or she was not interested in the meetings of the association?

11. What is the "previous question" motion? Explain its object, by whom it should be moved, the manner in which it should be dealt with, and the consequences of its acceptance.
12. Write brief notes on:
(*a*) Free speech and blasphemy.
(*b*) Adjournment of a meeting.
(*c*) Casting vote.
13. Explain the rules that have to be observed as to movers and seconders of:
(*a*) Motions.
(*b*) Amendments.
14. You are asked to preside at a public meeting at which matters of a contentious nature are likely to be discussed. State:
(*a*) The general rules you would be expected to observe.
(*b*) The kind of expressions you would consider should be repressed.
(*c*) The action you would take where persons are causing disorder in the meeting.
15. Explain the defence of justification in an action for libel or slander.
16. What are the rights as to meetings in the streets and the provisions of the Public Order Act, 1936, relating to processions?
17. "A fair and accurate report published in any newspaper of the proceedings of a public meeting . . . shall be privileged."
Discuss this statement and the question regarding newspaper reports generally as to libel.
18. Name the circumstances in which qualified privilege might be advanced as a defence in an action in respect of an alleged defamatory statement:
(*a*) At a public meeting.
(*b*) At a private meeting.
(*c*) At a meeting for the election of a candidate to a local government authority or to Parliament.
19. What is a "statutory meeting"? Describe briefly the requirements as to notice and report; and as to the proceedings at, and subsequent to, the meeting.
20. Name any statutory provisions known to you as to the giving of "special notice" of a resolution for a general meeting of a company. Your answer should deal with the practical aspect of the problem having regard to any anomalies or abuses that might arise as a result of the provisions.
21. Summarise the provisions of Table "A" or any similar regulations known to you as to the appointment of, and duties of, committees of directors. Is it usual for the board to ratify the minutes of committees; or, alternatively, has a member of the

board a right to question decisions of any such committees or to inspect the minutes thereof?

22. Define a special resolution. Name three matters that require the sanction of a special resolution.

23. Explain the provisions for summoning, and the quorum and voting rights required in connection with, a meeting for varying the rights attaching to certain classes of shares, under:
(*a*) Table "A" or any regulations known to you.
(*b*) Any relevant statutory provisions.

24. To what extent is a councillor liable for defamation in respect of statements made by him during a council meeting at which the public are present?

25. What purposes can be served by appointing sub-committees? To what extent may functions be delegated to sub-committees?

26. A contract was agreed to at a meeting at which less than the number of persons required for a quorum was present. Explain the position having regard to:
(*a*) The validity of the meeting.
(*b*) Third parties acting upon the contract who had no notice of the irregularity.
Explain also the significance of the term "disinterestedness" in relation to the ascertainment of a quorum at particular meetings.

27. Define a motion, and describe the rules as to its form, presentation and disposal. Write also short notes on:
(i) Dilatory motion.
(ii) Substantive motion.

28. What are the essential differences between reports and minutes? Name the essentials of good minutes, and the requirements necessary for their adoption; state also a member's responsibilities for decisions made at a meeting to which he was not summoned, the minutes of which he approved by formal vote at a subsequent meeting.

29. Discuss the following two statements in the light of relevant case decisions, and as to the ascertainment of majority findings in general:
(i) A statute provided that a meeting of electors "shall decide by a majority of electors whether or not a street shall be closed." A meeting of electors at which eighty were present was held and a vote was taken by voice only to the effect that under the statute a certain street be closed.
(ii) "The body whose majority is required, is the body of persons who take the trouble to answer the summons and come and record their votes."

30. An open-air speaker was in the habit of addressing meetings on private land adjoining a public open space. His meetings were so successful that crowds overflowed on to the public open space. Could the promoter of the meetings be restrained from holding them? Discuss the position having regard to

the rights (if any) of holding public meetings in parks and open spaces.

31. State in what circumstances you, as chairman, would be justified in ordering the removal of a disorderly person from a public meeting. What remedies are available should the offending person refuse to leave on your requesting him to do so?

32. Write short notes on.
    (i) Rolled-up plea.
    (ii) Breach of the peace.

33. A police officer on routine duties is requested by a person in the street to intervene in the case of an alleged disturbance at a meeting. Discuss the situation, having regard to the powers and duties of the police
    (*a*) At a public meeting in a public building;
    (*b*) At a private meeting held in a private hall.

34. Explain in what particulars the Defamation Act, 1952, replaces and/or extends the statutory defence of "qualified privilege" conferred on newspaper reports by the Law of Libel Amendment Act, 1888. Is the definition of a newspaper in any way amended by the Defamation Act, 1952? If so, explain briefly in what particulars.

35. Name any statutory provisions as to the appointment of a proxy. Do you know of any circumstances in which a member may appoint more than one person as a proxy?

36. Name the provisions under which a corporation which is a member or creditor of another company may appoint a person to act as its representative at a meeting of the other company or its creditors. If the person so appointed is also a member of the other company, can he on a show of hands cast two votes?

37. Name any statutory provisions known to you regarding the holding of an annual general meeting, and the consequences of default in so doing. What precautions would you take to prevent unauthorised persons attending the meeting?

38. The articles of a company contained a provision similar to that in Table A, clause 93, to the effect that no person other than a retiring director could be elected unless, not less than three nor more than twenty-one days before the meeting, the appointee expressing his willingness to be elected, were given to the company. Notice of an annual general meeting contained a proposed resolution for the election of three new directors by one resolution, and the notices under the relevant article were not given within the prescribed time.
    (i) Non-compliance with the articles.
    (ii) The legality of the proposed resolution.

39. Your organisation has been formed to further a philanthropic cause of national interest; it has 50 members and 6 elected members constitute its governing body. The members meet annually and the governing body meets monthly. In addition, public meetings are arranged throughout the country, to enable your chairman to make appeals, and up to 1,000 per-

sons attend each meeting. As secretary, you have specific duties in respect of each of the three types of meetings; list these duties and contrast them.

40. What do you understand by the common law of meetings? State how the common law has been modified by legislation from time to time.

41. Write short notes on *three* of the following:
   (*a*) Guillotine closure.
   (*b*) Nemine contradicente.
   (*c*) Previous question.
   (*d*) Clear days.

42. Explain the rules as to the amendment of a motion. Can a substantive motion be amended, and would it be permissible for a person who has proposed a motion to propose an amendment to it at a later stage in the meeting?

43. The judge in a well-known case said: "I think it is most important that the court should hold fast to the rule in Foss *v.* Harbottle [1843] 2 Hare 461."
   Explain the rule, and state the scope of its applicability.

44. At a meeting at which a poll was demanded by one person, the chairman decided that it should be taken at the close of the meeting. In the interval the member who proposed the holding of the poll asked for the request to be withdrawn. Discuss the situation with reference to decided cases.

45. An invigilator at an examination suspected an examinee of taking unfair advantage at that examination, and he exposed the offender's conduct to the rest of the examinees. The offender's employers heard of the incident, and he was dismissed from their service. Do you think that the examinee could sue the invigilator for slander? Give reasons for your answer.

46. Discuss the statutory rights available for the preservation of order at public and private meetings.

47. In the report of the Committee on Defamation the distinction between the law of libel and of slander was stated to be "arbitrary and illogical". State in what particulars the Defamation Act, 1952, amended the law of slander.

48. What is a point of order? Explain briefly the rules as to its presentation and adoption. Name also three matters upon which a point of order might be raised.

49. What is meant by "absolute privilege"? Does the defence apply to newspaper reports, and if so, are such reports affected by any recent legislation?

50. "The articles of a company constitute a contract between itself and the members." Explain this statement with particular reference to the position as to notices to be given by and to the company.

51. State the provisions of the Winding Up Rules as to proxies in relation to a winding up by the court, and to meetings of creditors in a creditors' voluntary winding up.

52. A general meeting held on 1st December was adjourned until 10th December. Explain the consequences of such action,

having regard to the provisions of Table A as to adjournment, and as to the position of proxy holders thereat.

53. What is an alternate director? How is he appointed? What are his duties and responsibilities? Can he be reckoned in a quorum?
54. Name any statutory rights available to members of a company for requisitioning an extraordinary meeting of a company.
55. To what extent is it appropriate to allow discussion when the minutes of the previous meeting are presented for signature?
56. How far is the Defamation Act, 1952, relevant to the proceedings of local authorities?
57. Should a councillor be allowed to inspect the documents of a committee of which he is not a member? Would it make any difference if he desired to inspect them (*a*) before, (*b*) after the documents had been considered by the committee?
58. Do you consider it advisable (*a*) for a councillor to be chairman of more than one committee, (*b*) for the chairman of the council to be chairman of a committee? Give reasons.
59. Write short notes on the provisions of each of the undernoted Acts relating to the law of meetings:
    Seditious Meetings Act, 1817.
    Metropolitan Police Act, 1839.
    Public Order Act, 1936.
60. Draft specimen agenda of the annual meeting of an association (other than a company or a local authority) and describe the proceeding you would adopt for minuting thereat. (Specimen minutes are not required; but a practical exposition of the essentials of the minutes and their subsequent adoption is called for).
61. Define a motion and state the rules as to the mover and seconder thereof and the method of its disposal. Has the mover of a motion the right to withdraw it?
62. Is there a common law right to a casting vote? Describe with reference to decided cases the chairman's duties in the event of an equality of votes.
63. Describe a committee system with particular regard to (*a*) purpose and powers, (*b*) chairman, (*c*) notice of meetings, and (*d*) quorum.
64. Explain the common law rights relating to the holding of a meeting in:
    (*a*) A public assembly hall.
    (*b*) A private building.
    (*c*) A park or open space.
65. State in what respects the Defamation Act, 1952, has altered the law relating to the defence of fair comment. Name the circumstances in which the plea can be accepted.
66. You are chairman of a public meeting at which you may expect:
    (*a*) Organised opposition.
    (*b*) Repeated interruptions.
    Describe briefly the methods you would adopt to minimise such obstructions and the remedies available should the meeting get out of hand.

67. Write short notes on any two of the following:
    (*a*) Innuendo.
    (*b*) Malice.
    (*c*) Wrongs actionable *per se*.
68. The Defamation Act, 1952, divides newspaper reports having qualified privilege into two categories. Name either one of these categories and summarise the relevant provisions in the Schedule to the Act so particularised.
69. What are the provisions of the Companies Act and Table A regarding minutes of general and board meetings. Do you favour the use of loose-leaf minute books, and if so what safeguards would you recommend to ensure their authenticity and safe keeping? Can action be taken immediately on decisions recorded in the minutes or must they be approved at the same or succeeding meeting before they can be implemented?
70. Name the provisions in Table A or in any articles known to you as to:
    (*a*) Rights and duties of proxy holders.
    (*b*) Votes of incapacitated persons.
71. Define the statutory rights available to members in regard to the giving of notice of a resolution at an annual general meeting and the statutory requirements in connection therewith.
72. Write explanatory notes on the following:
    (*a*) Amendment of extraordinary resolution.
    (*b*) Compulsory adjournment of meetings.
    (*c*) Registration of special resolutions.
73. What methods of voting may be used (*a*) by an urban district council, (*b*) by a borough council? To what extent does each of these methods involve risk of error in voting or in counting?
74. Distinguish between (*a*) a joint report, (*b*) a concurrent report, and (*c*) a minority report, and say what general considerations should be taken into account in preparing each of these.
75. What is meant by a council "going into committee"? When and why should this procedure be made use of?
76. In what circumstances may a meeting of a district council be convened by the members themselves? Describe the procedure to be followed.
77. What general considerations affect the secretarial practice of local authorities as compared with that of other organisations?
78. A committee has before it a report by the medical officer containing a recommendation for a certain course of action. Councillor A moves that the recommendation be adopted; his motion is seconded. Councillor B. moves an amendment which is not seconded. Councillor C. moves an amendment which is seconded but not agreed to. Councillor D. moves an amendment which is agreed to. No further amendments are moved.

    Draft (in outline) a suitable minute of these proceedings indicating the ultimate decision of the committee. Add any comment you think necessary to explain your answer.

79. (*a*) Under what statutory powers are local authorities enabled to appoint committees?
(*b*) Discuss the maxim "delegatus non potest delegare" in connection with the appointment of sub-committees by a committee.

80. In what circumstances can a casual vacancy arise in the membership of a local authority? At what point of time in each case does the vacancy arise?

81. Compare the appointment and functions of a chairman of a council with those of the chairman of a committee of the council.

82. What is a right of reply in a debate? Who normally has this right, what restrictions are imposed on its use, and what effect does its use have on the debate?

83. You are present at a meeting of your Association at which a matter derogatory to another member of your Association is to be discussed, and you know that the person in question has not received notice of the meeting. Discuss the situation, having regard to:
(i) The validity of the meeting.
(ii) The effect upon any decision thereat.
Would inadvertence in the giving of the notice or the absence abroad of the person concerned affect the situation?

84. What is a dilatory or interruptive motion? Give three examples of such motions, and state the rules applicable to their presentation and disposal.

85. Name the rules relating to moving, seconding and voting upon amendments under the usual procedure and the parliamentary procedure respectively.

86. A general meeting was called for the 30th December and adjourned until the 24th January, and on the 19th January certain proxies were lodged. Discuss the situation having regard to any regulations or cases known to you.

87. Write brief notes on any two of the following:
(i) Guillotine closure.
(ii) Chairman's duty in dealing with declaration of voting by show of hands.
(iii) Substantive motion.
(iv) Rescission of resolution.

88. "Any person who in any *public place* or at a *public meeting* uses threatening, abusive or *insulting words and behaviour* with intent to provoke a breach of the peace . . . shall be guilty of an offence."
Explain the above provisions, with special reference to the words in italics, or to any statutes or cases applicable thereto.

89. What is a "privileged occasion"? Name three circumstances in which such an occasion might arise.

90. What statutory remedies are available in cases where persons:
(i) Attempt to break up a lawful public meeting?
(ii) Incite others so to do?

91. "Every British subject knows that he can say what he likes,

where he likes, without fear of persecution, though the laws of . . . must be observed."

Write short notes on three of the laws that must be observed in this connection.

92. Name any common law offences relating to public disorder, and the duties of the police in relation thereto.

93. What remedies are available where it is impracticable to call or conduct a meeting in manner prescribed in the company's articles or the Act?

94. State with reference to decided cases the considerations that would apply to a quorum at a directors' meeting in the following circumstances:
   (i) Where Table A applies.
   (ii) Where the number of directors falls below the minimum number prescribed by the regulations.
   (iii) Where directors interested in a matter before the meeting are present thereat.

   What is the effect upon third parties of an irregularity in the quorum?

95. What do you understand by the term "special business"? Name three matters that might be so regarded, and the class of meeting and the kind of resolution required for each.

96. A member of a private company brings his solicitor with him, to speak on his behalf at an annual general meeting of the company. Is this permissible? Would the same considerations apply:
   (i) In the case of a public company?
   (ii) Where the solicitor is asked to attend by a personal representative of a deceased member?

97. Name the provisions of the Companies Act relating to the representation of corporations which are members or creditors of another company. What safeguards would you adopt to ensure that persons so present at a meeting are accredited representatives?

98. What are the recognised rules that should be observed in relation to notice of meetings?

99. Write brief notes on any THREE of the following:
   (i) Postponement of a meeting.
   (ii) Adjournment of a meeting.
   (iii) Clear days (with special reference to Sundays and Bank Holidays).
   (iv) Maintenance of a quorum.

100. Discuss the principle in Foss *v.* Harbottle [1843], 2 Hare 461, with particular reference to:
   (i) Individual rights.
   (ii) Corporate rights.

101. Discuss the common law right to demand a poll. Do you know of any circumstances where this right is affected by regulation? Explain briefly the chairman's duties when confronted with a demand for a poll by one person:
   (i) At a public meeting.
   (ii) At a meeting where particular regulations apply.

Explain also any methods known to you of recording votes on a poll.

102. Explain the meeting procedure of any committee with which you may be familiar with special reference to the quorum, and to the chairman's and secretary's duties thereat. Is it obligatory to keep minutes of such proceedings?

103. What do you understand by the term public meeting? Would a meeting of a company or of a registered body be so regarded? Name any circumstances where common law rights (if any) in this connection are affected by statute.

104. Explain briefly the defence of qualified privilege and give three examples where the defence might apply.

105. Discuss the rights of the Press in relation to public meetings, and of meetings of local authorities or of any committees thereof.

106. "The letter was written on a privileged occasion and in order to convict the accused the jury had to be satisfied that the words were criminally malicious." You are asked to comment on this statement with particular reference to the question of malice in relation to defamatory statements generally.

107. Explain any statutory provisions or cases known to you regarding street processions and right and duties of the police in connection therewith.

108. Define a special resolution and name any circumstances which might give rise to acceptance of a shorter period of notice than that prescribed.

Can a special resolution be amended?

Explain also the requirements as to the filing of special resolutions.

109. To what companies does Table A apply? Give a synopsis of the matters therein, or in any set of articles known to you, relating to the proceedings of general meetings of members.

110. Describe the statutory requirements for convening the annual general meeting (other than the first) and the procedural matters that have to be considered in relation thereto.

111. What resolutions have to be passed and what meetings have to be held in (*a*) a members' voluntary winding up and (*b*) a creditors' voluntary winding up?

112. Describe the secretary's duties in relation to:

(i) The convening of a meeting which is subject to rules and regulations. (The requisites of a valid notice need not be detailed.)

(ii) The constitution of a meeting, having regard to the position of persons attending in a representative capacity and otherwise. (Questions relating to a quorum other than its maintenance are relevant.)

113. "Wherever a certain number are incorporated, a major part of them may do any corporate act." Comment on this principle.

The rules of a club provide in certain circumstances for a majority of not less than two-thirds of those present: one hundred attended a general meeting, of whom 61 voted for a

motion and 29 against, and the chairman declared the motion carried. Was he correct?

114. Describe how minutes should be prepared, with special regard to the following points:
(i) Methods designed to ensure their accuracy.
(ii) The manner of their adoption.
Explain the legal significance of minutes when once they have been signed.

115. Explain the chairman's duties in ascertaining the sense of a meeting, and the various methods of voting. Is it obligatory for a motion to be put to a meeting before a vote is taken? What would be the position should it be known that the chairman incorrectly declared the result of voting?

116. What are the powers of the police:
(i) Where a member of the public informs a constable that a public meeting which he has just left has got out of hand.
(ii) Where through persistent interruption a speaker at an outdoor meeting cannot secure a hearing.
(iii) Where the police have reason to anticipate breaches of the peace.

117. The Defamation Act, 1952, Part II, makes provision for newspaper statements which are privileged subject to explanation or contradiction. Explain and comment on these provisions.

118. Explain the measures that should be taken to deal with disorder at a public meeting.
In what circumstances may a private meeting be held in a public place? If there are such circumstances, what remedies are available in the case of disorder?

119. Explain briefly the defence of "fair comment upon a matter of public interest."

120. What is an unlawful assembly? What are the statutory provisions relating to such an assembly?

121. X and Y are directors and members of Z Co., Ltd., and disagree on certain policies recently agreed by the board, which consists of five directors. The company has adopted Table A. You, as secretary, have received formal notice that X wishes to convene an extraordinary general meeting to explain his point of view, and Y has intimated that he will resign as director should X take the action contemplated. Explain how you would act in these circumstances.

122. Write brief notes on any THREE of the following:
(i) Two-way proxies.
(ii) Proxies in relation to meetings of creditors in a creditors' voluntary winding up.
(iii) Proxies under a scheme of arrangement.
(iv) Proxies in relation to meetings of public companies.
(v) Proxies in relation to meetings of private companies.

123. Outline the provisions of the Act and of Table A relating to a class meeting. Give examples of relevant matters that might

be dealt with at such a meeting, and draft resolutions appropriate to these matters.

124. You have recently been appointed secretary of an employers' federation, a company limited by guarantee and not having a share capital. What provisions relating to meetings and minutes of directors (or council) of such an association would you expect to find in the articles of association?

125. Explain briefly how the following are represented at a general meeting of a company:
   (i) Joint holders, of whom the first is a minor.
   (ii) A corporation.
   (iii) A deceased shareholder.
   How, in each case, are votes determined?

126. (*a*) What minutes of proceedings does the Companies Act, 1948, require to be kept? Where should they be kept, who may inspect them, and when may they be inspected?
   (*b*) What statutory provisions are made for the signature of minutes and to what extent are minutes evidence of matters recorded therein?

INDEX

[Pages 1–74 refer to meetings generally.
Pages 77–193 refer to meetings in the case of companies.
Pages 197–233 refer to meetings of local authorities.]